

## **Agenda Item 5**

Background material follows this separator page.

# Town of Vienna

## Council Agenda Communication

<b><u>DATE:</u></b> April 20, 2009	<b><u>SUBJECT:</u></b> REQUEST COUNCIL APPROVAL OF PROPOSED AMENDMENTS TO THE COUNCIL SQUARE, INC. (TOWNHOUSE OWNERS' ASSOCIATION) "DECLARATION OF COVENANTS AND RESTRICTIONS," AS THEIR ORIGINAL DECLARATION REQUIRES.
<b><u>AGENDA ITEM:</u></b> 5	

<b>Originating Department:</b>	<b>The Office of the Mayor.</b>
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EXPLANATION AND SUMMARY	
<p>The homeowners' association for Council Square, Inc. has completely rewritten their original <i>Declaration of Covenants and Restrictions</i> in order to conform to the <i>Virginia Property Owners' Association Act</i>.</p> <p>One section of the original Declaration requires that the Vienna Town Council approve any amendments to the Declaration. The law firm of Chadwick, Washington, Moriarty, Elmore &amp; Bunn P.C., representing Council Square Inc., has sent a proposed Amended and Restated Declaration of Covenants and Restrictions for Council Square, Inc., and a copy of the original version. They have already discussed this matter with Steve Briglia, and they now request Council's review and approval of the new agreement.</p>	

<b>Documents Attached:</b>	<ol style="list-style-type: none"><li>1. 04-03-09 letter from Chadwick, Washington, Moriarty, etc.</li><li>2. Original Declaration of Covenants and Restrictions.</li><li>3. Amended and Restated Declaration of Covenants and Restrictions.</li><li>4. 04-15-09 Memo from Daniel Streich, 'Summary of Changes.'</li></ol>
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<b>Departmental Recommendation:</b>	
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<b>Town Manager's Recommendation:</b>	
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<b>Town Attorney's Review/Recommendation:</b>	Pursuant to the original homeowner covenants and restrictions for the Council Square Townhouses, Council must approve any changes to the Declaration of Covenants and Restrictions.
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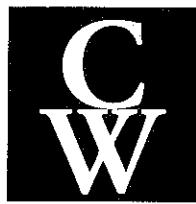
<b>Cost and Financing:</b>	
<b>Account Number:</b>	

<b>Decision Needed by This Date:</b>	
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<b>PROPOSED/SUGGESTED MOTION</b>
<p>“I move for the <b>(approval/disapproval)</b> of the ‘Amended and Restated Declaration of Covenants and Restrictions’ as presented herein.”</p> <p><i>Or other action as Council deems appropriate.</i></p>

<b>DISPOSITION BY COUNCIL</b>	
<input type="checkbox"/> Approved	<input type="checkbox"/> Deferred Until:
<input type="checkbox"/> Denied	<input type="checkbox"/> Other:
<p>COMMENTS:</p>	

Kenneth E. Chadwick (VA, MD)  
Wilbert Washington II (VA, MD, DC)  
Stephen H. Moriarty (VA)  
Andrew G. Elmore (VA)  
Brendan P. Bunn (VA, DC)  
Daniel B. Streich (VA, DC)  
Allen B. Warren (VA, DC)



CHADWICK  
WASHINGTON  
MORIARTY  
ELMORE &  
BUNN P.C.

Jerry M. Wright, Jr. (VA)  
Sara J. Ross (VA)  
Sheyna Nicole Burt (VA, DC)  
Alexandra Spaulding (VA)  
Mary N. Peacock (VA)  
Marie Johnson (VA, DC)  
Cassie R. Craze (VA)  
Bruce H. Easmunt (VA)  
Kristin K. West (VA, WV)

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April 3, 2009

RECEIVED  
APR - 6

The Honorable M. Jane Seeman, Mayor  
Town of Vienna  
127 Center Street, South  
Vienna, Virginia 22180

**Re: Amended and Restated Declaration of Covenants and Restrictions for  
Council Square, Inc. ("Association")**

Dear Mayor Seeman:

This firm represents Council Square, Inc., a Virginia property owners association and nonstock corporation organized and operating pursuant to the *Virginia Property Owners' Association Act* (Va. Code § 55-508, *et seq.*) and the *Virginia Nonstock Corporation Act* (Va. Code § 13.1-801, *et seq.*). The Council Square subdivision is a 49-lot townhome development located within the boundaries of the Town of Vienna.

Enclosed please find a proposed Amended and Restated Declaration of Covenants and Restrictions for the Council Square subdivision. Also enclosed is a copy of the original Declaration of Covenants and Restrictions, which was admitted to record in the land records of Fairfax County in 1980.

The proposed Amended and Restated Declaration is a complete rewrite of the original Declaration. It has been presented to the Association's membership and will be voted upon by the membership within the next 6 months. The Amended and Restated Declaration was drafted for the purpose of updating the original Declaration and conforming same to the *Virginia Property Owners' Association Act* ("POAA"). As you may know, the first version of the POAA was only enacted in 1989 and has been amended almost every year since its initial enactment into law. The Amended and Restated Declaration will provide the Association with the legal authority to regulate the activities and appearances of the individual lots, thereby helping to preserve the property values within the community.

Although we suspect that the provision is more a formality than a substantive requirement, please note that Section E.6 of the original Declaration requires the approval of the Town Council of the Town of Vienna of any proposed amendments to the Declaration. We have

*The Honorable M. Jane Seeman, Mayor*  
*April 3, 2009*  
*Page 2*

discussed this matter with Steve Briglia, the Town Counsel, and he has already reviewed the proposed Amended and Restated Declaration and the original Declaration. Mr. Briglia suggested that we contact you directly in order to have this matter placed on the agenda for the Town Council's meeting of April 20, 2009, or, if that date is unavailable, then May 18, 2009.

We therefore submit the attached proposed Amended and Restated Declaration of Covenants and Restrictions to your office for placement on the agendas of either the April 20, 2009 or May 18, 2009 Town Council meetings. We ask the Council to vote to approve the proposed Amended and Restated Declaration of Covenants and Restrictions for the Council Square subdivision.

The Association will appreciate the Town Council's prompt action on this matter. Please contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel B. Streich", written over a horizontal line.

Daniel B. Streich

Enclosures

cc: Board of Directors

0279 / 2

DECLARATION OF COVENANTS AND RESTRICTIONS

WHEREAS, WEDGEFIELD CORPORATION, a Virginia corporation, (hereinafter referred to as "Grantor"), owns certain real property hereinafter described; and

WHEREAS, Grantor has improved said property by constructing thereon forty-nine (49) townhouses, one on each of forty-nine (49) separate and individual lots, in the Town of Vienna, Fairfax County, Virginia; and

WHEREAS, Grantor hereby establishes by this Declaration a plan for the ownership, operation and maintenance, by a non-profit membership corporation to be known as COUNCIL SQUARE, INC., of that portion of the hereinafter described property which has not been subdivided into the forty-nine (49) individual lots, the said portion being hereinafter described and referred to as the "common greens and areas"; and

WHEREAS, Grantor as one of the purposes of this Declaration undertakes to assure to and for the benefit of the Town of Vienna, that the "common areas" of said townhouse development will be properly maintained in accordance with the policies of the Town of Vienna;

NOW, THEREFORE,

W I T N E S S E T H,

Grantor, the fee simple owner of the following described real property in the Town of Vienna, Fairfax County, Virginia, described on Exhibit A attached hereto, hereby makes the following declaration as to divisions, covenants, restrictions, limitations, conditions and uses to which the above described real property and improvements thereon may be put, hereby specifying that said Declaration shall constitute covenants to run with the land and shall be binding on Grantor, its successors

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and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their Grantees, successors, heirs, executors, administrators, devisees or assigns:

A. Grantor, in order to establish a plan of corporate ownership, operation and maintenance of a portion of the above described property and improvements, hereby covenants and agrees that it hereby subdivides in accordance with the laws of Virginia and the ordinances of the Town of Vienna, Virginia, the said real property into the following separate freehold estates:

1. The forty-nine (49) separately designated and legally described freehold estates consisting of forty-nine (49) lots on each of which a townhouse has been erected or will be erected, said lots being defined, and referred to herein, as "townhouse lots", and buffer strip as shown on Deed of Dedication plat.

2. A freehold estate consisting of the remaining portion of the real property which is described and referred to herein as the common greens and areas, which definition includes, but is not limited to, the common greens, fences, parking lots, walks, curbs and other improvements contained within the boundaries of the development.

B. The freehold estate described in paragraph A.2. above, shall be conveyed by deed to COUNCIL SQUARE, INC., a Virginia non-stock corporation, incorporated for the specific purpose of implementing and carrying out the restrictions and covenants set forth herein. The common greens and areas shall be maintained in accordance with the site plan approved by the Town Council of Vienna and the general health, welfare and best interest of the public as expressed in all applicable ordinances of the Town of Vienna, including any amendments thereto. Such Deed of Conveyance shall contain and set forth the restrictions and covenants contained herein, which covenants and restrictions shall run with the land.

C. The common greens and areas shall not be defaced, denuded, or otherwise disturbed in any manner without the written approval of the Town Council of Vienna first obtained. The common greens and areas shall be maintained in accordance with the site plan approved by the Town Council of Vienna and the general health, welfare and best interest of the public as expressed in all applicable ordinances of the Town of Vienna, including any amendments thereto.

D. The owner of each townhouse lot shall bear one forty-ninth (1/49) of the cost of maintaining the common greens and areas as determined by the Board of Directors of COUNCIL SQUARE, INC. (hereinafter referred to as the "Corporation".)

E. Grantor, its successors and assigns, by this Declaration, and all future owners of the townhouse lots by their acceptance of their deeds, covenant and agree as follows:

1. That the common greens and areas shall remain undivided; and no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation, maintenance and management of the common greens and areas.

2. That the townhouse lots shall be occupied and used by the respective owners only as a private dwelling for the owner, his tenants and social guests and for no other purpose.

3. That an owner of a townhouse lot shall automatically, upon becoming the owner of a townhouse lot or lots, be a member of COUNCIL SQUARE, INC., hereinafter referred to as the "Corporation" and shall remain a member of same until such time as his ownership ceases for any reason, at which time his membership in said Corporation shall automatically cease.



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4. That the owners of townhouse lots covenant and agree that the administration of the common greens and areas shall be in accordance with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws of the Corporation which are made a part hereof and attached as Exhibits "B" and "C".

5. That each owner, tenant or occupant of a townhouse lot shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws, decisions and resolutions of the Corporation or its representatives, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

6. That this Declaration shall not be revoked or any of the provisions herein amended unless all of the owners and the mortgagees of all of the mortgages including trustees under any and all deeds of trust covering the townhouse lots unanimously agree to such revocation or amendment by duly recorded instruments after first having obtained approval of the Council of the Town of Vienna to such change.

7. That no owner of a townhouse lot may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common greens and areas or by the abandonment or non-use of his townhouse lot.

F. All sums assessed by the Corporation but unpaid for the share of the common expenses chargeable to any townhouse lot shall constitute a lien on such townhouse lot prior to all other liens except only (1) tax liens on the townhouse lot in favor of any governmental assessing body, and, (2) all sums unpaid on any mortgage or deed of trust of record. Such lien may be foreclosed by suit by the Corporation, acting on behalf of the owners of the townhouse lots, in like manner as a judgment lien on real property.

In any such foreclosure the townhouse lot owner shall be required to pay a reasonable rental for the townhouse lot and the Plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Corporation, acting on behalf of the owners of the townhouse lots, shall have the power, unless prohibited herein, to bid on the lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expense shall be maintainable without foreclosing or waiving the lien securing the same.

In the event that the Corporation fails within sixty (60) days from the date on which the Corporation receives notice from the Town Council of Vienna or its designated representative of a default or other breach of obligations contained herein to pursue its remedies against a defaulting member as provided herein, or in the event that the Corporation shall fail to maintain the common greens and areas as provided herein, then the Town of Vienna, or its legally constituted successors or assigns, as a third party in interest, shall, acting by and through its appropriate official, be empowered to exercise the authority vested in the Corporation to enforce these covenants and may exercise such authority against any or all owners of the townhouse lots as it deems prudent in its sole discretion.

In the event the Corporation dissolves or the individual owners of the forty-nine (49) townhouse lots fail to maintain the common greens and areas as provided herein, then the Town of Vienna, or its legally constituted successors or assigns, as a third party in interest, shall, acting by and through its appropriate official, be empowered to exercise the authority vested in the Corporation to enforce these covenants and may exercise such authority against any or all owners of the townhouse lots as it deems prudent in its sole discretion.

G. Where the mortgagee of a mortgage of record, or the beneficiary of a deed of trust or other purchaser of a townhouse lot obtains title to the lot as a result of a foreclosure of the mortgage, such acquirer of title, his successors, and assigns, shall not be liable for the share of the common expenses or assessments by the Corporation chargeable to such townhouse lot which became due prior to the acquisition of title to such townhouse lot by such acquirer. Such unpaid share of common expenses shall be deemed to be common expenses collectible from all of the townhouse lots including such acquirer, his successors and assigns.

H. The respective townhouse lots shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period of less than three (3) months or (b) any rental if the tenants of the townhouse lot are provided customary hotel services, such as room service for food and beverages, maid service, furnishing laundry and linen, and bellboy service. Other than the foregoing obligations, the owners of the respective townhouse lots shall have the absolute right to lease same and the said lease will be subject to the covenants and restrictions contained in this Declaration and further subject to the By-Laws attached hereto.

I. In a voluntary conveyance of a townhouse lot, the grantee of the lot shall be jointly and severally liable with the grantor for all unpaid assessments by the Corporation against the latter for his share of the common expenses up to the time of the grant or conveyance; without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Corporation setting forth the amount of the unpaid assessments against the grantor due the Corporation and such grantee shall not be subject to a lien for any unpaid assessments made by the

Corporation against the grantor in excess of the amount therein set forth.

J. All agreements and determinations lawfully made by the Association, and not contrary to the provisions hereof, in accordance with the voting procedures established in this Declaration, the Articles of Incorporation, or in the By-Laws, shall be deemed to be binding upon all owners of townhouse lots, their successors and assigns.

K. That so long as Grantor, its successors and assigns, own one or more of the townhouse lots established and described herein, Grantor, its successors and assigns shall be subject to the provisions of this Declaration and of Exhibits "A" and "B" attached hereto; and Grantor covenants to take no action which would adversely affect the rights of the Corporation with respect to assurances against latent defects in the property or other right assigned to the Corporation by reason of the establishment of the common greens and areas.

L. That in order to fund the maintenance of the common greens and areas:

1. Grantor shall create an escrow reserve equal to the estimated costs of maintaining the common greens and areas for a period of one (1) year, as shown on a schedule attached hereto and identified as Exhibit "D", by depositing the said amount into a checking account in the name of COUNCIL SQUARE, INC., in a bank located in the Town of Vienna, Virginia.

2. A sum equal to one forty-ninth (1/49) of the amount defined in subparagraph M.1. above shall be charged to, and paid by, the purchaser of each townhouse lot and deposited in the said account.

3. The failure of Grantor, its successors in interest, or any purchaser to comply with paragraph 1. immediately preceeding shall not constitute or create a lien or other obligation

of any nature whatsoever binding upon or affecting in any manner whatsoever any of the townhouse lots described herein or the ownership of or title thereto.

M. This Declaration shall be deemed to be severable, so that if any section, paragraph or portion hereof shall be determined to be invalid or contrary to the statute or decisional law of the United States of America, the Commonwealth of Virginia, the County of Fairfax, the Town of Vienna or any other applicable governmental body, then the remainder of the Declaration shall remain valid, subsisting and of legal efficacy, binding upon the aforesaid properties in every other respect, consistent with the intent hereof.

WITNESS the following signature and seal:

WEDGEFIELD CORPORATION

By

  
ROBERT J. HARRIS, President

BK5503 1770

EXHIBIT "A"

All of Lots 1 through 49, inclusive, plus buffer strip, COUNCIL SQUARE II, as the same is duly dedicated, platted and recorded in Deed Book 5294, at Page 156, and corrected in Deed Book 5469, at Page 0360, both among the land records of Fairfax County, Virginia

A N D

Parcels A, B and C, COUNCIL SQUARE II, as the same is duly dedicated, platted and recorded in Deed Book 5294, at Page 156, and corrected in Deed Book 5469, at Page 0360, both among the land records of Fairfax County, Virginia.

## **AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS**

**This Amended and Restated Declaration** is made by COUNCIL SQUARE, INC., hereinafter referred to as "the Association," which Association is comprised of all owners of record of Lots within the Council Square II subdivision, as that property is more specifically described in Exhibit A attached hereto and in the recitals below, on the date hereinafter set forth.

### **W I T N E S S E T H**

**WHEREAS**, WEDGEFIELD CORPORATION, a Virginia corporation, (hereinafter referred to as "Grantor"), owned certain real property hereinafter described; and

**WHEREAS**, Grantor improved said property by constructing thereon forty-nine (49) townhouses, one on each of forty-nine (49) separate and individual Lots, in the Town of Vienna, Fairfax County, Virginia; and

**WHEREAS**, Grantor hereby established by a Declaration of Covenants and Restrictions ("Declaration") a plan for the ownership, operation and maintenance, by a non-profit membership corporation to be known as COUNCIL SQUARE, INC. ("Association"), of that portion of the hereinafter described property which has not been subdivided into the forty-nine (49) individual Lots; and

**WHEREAS**, by Articles of Incorporation dated August 29, 1980 and filed with the State Corporation Commission at Book 21, Page 454, the Association was incorporated as a nonstock corporation; and,

**WHEREAS**, the aforementioned Declaration was recorded in the land records of the Circuit Court of Fairfax County, Virginia, at Book 5503, Page 1762, *et seq.*; and,

**WHEREAS**, the members of the Association now deem it necessary to amend and restate the Declaration, so as to preserve the value and amenities of the community, administer the restrictive covenants and the rules and regulations duly adopted and approved by the Association, provide for the architectural control of the individual Lots and the common area, regulate the improvements located on the Lots and the maintenance thereof, collect annual and special assessments as set forth herein, and update said Declaration so as to bring it into conformity with the Virginia Property Owners' Association Act ("Act") (Va. Code 55-508, *et seq.*) and all other relevant statutes, ordinances, court decisions and federal or state rules; and

**WHEREAS**, Paragraph E.6 of the Declaration states that the Declaration may not be amended "unless all of the owners and the mortgagees of all of the mortgages including trustees

under any and all deeds of trust covering the townhouse Lots unanimously agrees to such...amendment by duly recorded instruments after first having obtained approval of the Council of the Town of Vienna to such change"; and,

**WHEREAS**, the Act provides that any amendment to the Declaration shall be evidenced by the Lot owners' execution or ratification of the amendment, and that the amendment shall then become effective when recorded together with a certification signed by the principal officer of the association attesting that the requisite majority of owners signed the amendment or ratification thereof; and

**WHEREAS**, on or about \_\_\_\_\_, 2009, the membership of the Association unanimously approved, and indicated their approval by signature thereon, this Restated and Amended Declaration of Covenants and Restrictions; and,

**WHEREAS**, it is now the intent of the Association to execute and record this Amended and Restated Declaration in the land records of Fairfax County, Virginia, in order to correct all previous errors, incorporate all previous amendments, and reflect the changes in circumstances since the initial Declaration;

**NOW, THEREFORE, IN CONSIDERATION** of the premises, the Association, as successor to the aforementioned Grantor, hereby declares that all of the property described in the Exhibit "A" to the aforementioned Declaration of record, shall be subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest therein or in any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.** "Association" shall mean and refer to COUNCIL SQUARE, INC., its successors and assigns.

**Section 2.** "Property" shall mean and refer to that certain real property hereinabove described, both common area and individual Lots, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, in accordance with the terms of this Amended and Restated Declaration.

**Section 3.** "Common Area" shall mean all real property (including the improvements thereto) which is not part of an individual Lot and which is owned by the Association for the common use and enjoyment of the members of the Association and being initially composed of Parcels A, B and C, Council Square II, as set forth in the plats described in Exhibit A hereto.



Section 4. "Lot" shall mean and refer to any subdivided individual plot of land shown upon any recorded subdivision plat of the Property, but with the exception of the Common Area and areas dedicated as public or private streets.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Dwelling" shall mean and refer to any building or portion of a building situated upon the Property and designed and intended for use and occupancy as a residence.

Section 8. "Mortgagee," as used herein, means the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. "Mortgage," as used herein, shall include deed of trust. "First Mortgage," as used herein, shall mean a mortgage with priority over other mortgages. As used in this Declaration, the term "mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgages. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, saving and loans associations, trusts, mutual savings, banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States Government or of any state or municipal government. As used in this Declaration the terms "holder" and "mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

## **ARTICLE II**

Section 1. Property Subject to Declaration. The real property which is, and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Amended and Restated Declaration is located in the Town of Vienna, Fairfax County, Commonwealth of Virginia, and is more particularly described in "EXHIBIT A" to the Declaration of Covenants and Restrictions recorded prior hereto in the land records of the Circuit Court of Fairfax County, Virginia, at Book 5503, Page 1762, *et seq.*

## **ARTICLE III**

### **MEMBERSHIP**

Section 1. Every person or entity who is a record owner of a fee or undivided fee

interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership for each Lot owned. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. Membership in the Association shall automatically cease upon the conveyance of title to the Lot.

Section 2. The Association shall have one (1) class of voting membership: Class A members shall be all those Owners as defined in Article I, who own and hold title to a Lot upon which a single family dwelling unit is or can be constructed. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by this Article. When more than one adult person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

#### ARTICLE IV

Member's Rights of Enjoyment. Every member shall have a right and easement of enjoyment in and to the common areas and such easement shall be appurtenant to and shall pass with the fee title to every Lot, subject to the following.

(a) the right of the Association, and with the consent of two-thirds (2/3) of the members of the Association, voting separately, to borrow money for the purpose of improving the common areas in a manner designed to promote the enjoyment and welfare of the members and in aid thereof to mortgage any of the common areas; and

(b) the right of the Association, acting through its Board of Directors, to adopt reasonable rules and regulations regarding the use of the common areas, to include the assignment of reserved parking spaces on common area parking; and,

(c) the right of the Association to dedicate or transfer all or any part of the common areas to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members and further subject to the then existing laws and applicable ordinances; provided, however, that no such dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless two-thirds (2/3) of the voting members of the Association consent to such dedication, transfer, purpose and conditions, at any special meeting of the members duly called for such purpose.

(d) the right of the Association, acting by and through its Board of Directors, to grant licenses, rights of way and easements for access or for the construction,

reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, or any other person; provided, however, that no such licenses, rights of way or easements shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the common areas.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1.     Annual Maintenance Assessments. Each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who becomes a fee owner of a Lot within the Property, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association, in advance, a quarterly sum (herein elsewhere sometimes referred to as "maintenance assessments") equal to one-quarter (1/4) of the member's proportionate share (which shall be 1/49th of the sum required by the Association), as estimated by its Board of Directors, to meet the Association's annual expenses, including but in no way limited to the following:

(a)     the cost of maintaining, replacing, repairing, landscaping the common areas, including, without limitation, maintenance of any storm water detention basins or the like located upon the common areas and the cost of the maintenance of all sidewalks upon the property, together with such equipment as the Board of Directors shall determine to be necessary and proper in connection therewith; and

(b)     the cost of necessary management and administration of the common areas, including fees paid to any Management Agent (if applicable); and

(c)     the amount of all taxes and assessments levied against the common areas; and

(d)     the cost of liability insurance on the common areas and the cost of such other insurance as the Association may effect with respect to the common areas; and

(e)     the cost of utilities and other services which may be provided by the Association, whether for the common areas or for the Lots, or both; and

(f)     the cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and a reserve for replacements.

The Board of Directors shall determine the amount of the maintenance assessment annually. Based upon that determination, the Board of Directors shall then prepare, or cause the preparation of, an annual operating budget for the Association which shall provide, without

limitation, for the management, operation and maintenance of the common areas. The annual operating budget shall be presented to the membership for ratification at either the annual meeting of the Association or at such other meeting or by such other means as the Board may direct. An approving vote of a majority of a quorum of members present and voting in person or by proxy shall ratify the annual budget. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual maintenance assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall publish to each Lot owner the annual maintenance assessments applicable thereto. The proposed budget shall be available to inspection by any owner upon reasonable notice to the Board. Written notice of the annual maintenance assessments shall thereupon be sent to the members. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual maintenance assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any member from the obligation to pay the annual maintenance assessment, or any installment thereof, for that or any subsequent assessment period, but the annual maintenance assessment fixed for the preceding period shall continue until a new maintenance assessment is fixed. No member may exempt himself from liability for maintenance assessments by abandonment of any Lot belonging to him or by the abandonment of his right to the use and enjoyment of the common areas.

Any member may pre-pay one or more installments on any annual maintenance assessment levied by the Association, without premium or penalty.

Except as may be specifically provided for herein, this Declaration does not contemplate that the Association shall have any responsibility for the maintenance or repair of the dwellings or their appurtenances. The responsibility and duties of the Association for maintenance and repairs shall be generally limited to the common areas, but may include services performed on the individual Lots as a common expense if all individual Lots are similarly served. If the Association, acting through its Board of Directors and at the Board's discretion, undertakes to perform routine landscape maintenance on all of the individual Lots, it shall be deemed neither a duty nor an obligation of the Association, but rather as a service offered as a convenience to the membership, at the common expense, which service may be terminated by the Board of Directors at the Board's discretion.

Similarly, if a facility, improvement or equipment situated on a Lot (such as a retaining wall, storm sewer, sidewalk, *etc.*) affects or serves more than one (1) Lot of the development or serves more than one (1) Lot, the Association shall maintain, repair and replace that facility or feature as a common expense. Otherwise, the owner of any Lot shall, at his own expense, maintain his Lot and dwelling, and any and all appurtenances thereto, in good order, condition and repair and in a clean, sightly and sanitary condition at all times.

Section 2. Special Maintenance Assessments. In addition to the regular maintenance assessments authorized by this Article, the Association may levy in any assessment year a special maintenance assessment or assessments, applicable to that year only, for the purpose of

defraying, in whole or in part, the cost of any construction or reconstruction, inordinate repair or replacement of a described capital improvement located upon, or forming a part of the common areas, including the necessary fixtures and personal property related thereto, or for such other purpose as the Board of Directors may consider appropriate; provided that any such assessment shall have the assent of the members representing a majority (51%) of the members of the Association. A meeting of the members shall be duly called for this purpose.

Section 3. Reserves for Replacements. The Association shall establish and maintain a reserve fund for replacements of the common areas by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any State or by any agency of the United State of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal, by the United States of America. The reserve for replacements for the common areas may be expended only for the purpose of effecting the replacement of the common areas, major repairs to any sidewalks, parking areas, streets, roadways and privacy brick wall developed as a part of the Property, equipment replacement, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the common areas. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider necessary or appropriate. The proportional interest of any member in any such reserves shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains, and shall be deemed to be transferred with such Lot.

Section 4. Non-Payment of Assessments - Memorandum of Lien for Assessments

Any assessment levied pursuant to this Declaration, and any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with any late fee and interest thereon and the cost of collection thereof, as hereinafter provided, become a continuing lien upon the Lot or Lots belonging to the member against whom such assessment is levied.

The lien evidenced hereby shall bind the Lot or Lots herein described in the hands of the then owner thereof, his heirs, devisees, personal representatives and assigns. The personal obligation of the member to pay such assessment shall, in addition, remain his personal obligation for the statutory period and a suit to recover a money judgment for nonpayment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without establishing, perfecting, foreclosing or waiving the lien herein provided for to secure the same.

No suit or other proceeding may be brought to enforce or foreclose the lien evidenced herein after thirty-six (36) months from the date the assessment became due and owing. Any suit or other proceeding brought to enforce or foreclose the lien shall be in conformance with the relevant section of the Virginia Property Owners' Association Act (Va. Code Section 55-516). Any notice required thereunder shall be sent to the address of the member shown on the roster of

members maintained by the Association, in the form of mailing as may be required by statute, and if no particular form of mailing is specified, then by first class mail, postage prepaid.

Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within fifteen (15) days after it is due shall bear interest at the rate of ten percent (10%) per annum, accruing from the date of the delinquency, and the Association may bring an action at law against the member personally obligated to pay the same, or foreclose on the lien against the Lot or Lots then belonging to said member in the manner now or hereafter provided by law. A one-time late fee of ten percent (10%) of the unpaid assessment shall also be assessed. If the Association's lien is foreclosed by either judicial action or non-judicial sale, costs and reasonable attorneys' fees of not less than twenty-five percent (25%) of the sum claimed shall be added to the amount of unpaid principal.

The Association shall notify the holder of the first mortgage on any Lot in the event that the Association elects to foreclose, judicially or non-judicially by statute (Va. Code Section 55-516). Any failure to give such notice shall not affect the validity of the lien for any assessment levied pursuant to this Declaration, nor shall any such failure affect any of the priorities established in this Article.

Any member in arrears of any portion of his maintenance assessment obligation by more than thirty (30) days shall automatically and without any action required by the Board have his right to vote on all matters brought before the Association suspended until such time as his assessment account shall be brought current, including any interest, costs and attorneys' fees incurred by the Association in the collection of the delinquent account. Additionally, the Board may accelerate the assessment account of such member through to the end of the fiscal year, such that the balance of the annual assessment shall become immediately due and owing. Referral by the Board of Directors of any delinquent account to the Association's counsel for collection shall be deemed to be the Board's decision to accelerate that account.

Any member in arrears of any portion of his maintenance assessment obligation by more than sixty (60) days shall, upon resolution of the Board of Directors and after notice and an opportunity to be heard, have his right to use the common areas, including any parking spaces located thereon, suspended until such time as his account may be brought current, including any interest, costs and attorneys' fees incurred by the Association in the collection of the delinquent account. Such suspension shall be in accordance with the limitations set forth at Va. Code Section 55-513B.

Section 5. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first trust or mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien

thereof.

Section 6. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; and, (b) the Common Area. No land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 7. Date of Commencement of Annual Assessments: Due Dates. A purchaser of a Lot shall be subject to the assessment obligation as of the first day of the month following the conveyance of the Lot to the new Owner. The annual assessment of such Lot shall be adjusted according to the number of months remaining in the calendar year.

Section 8. Dissolution of Association. In the event of dissolution of the Association, in accordance with the terms of its Articles of Incorporation, each Lot shall continue to be subject to the annual assessment specified in Section 1 of this Article, and each Owner shall continue to be personally obligated for such assessment, to the extent that such assessments are required to enable the grantee of the real property owned by the Association to properly maintain it.

## **ARTICLE VI**

Section 1. Architectural Review Committee ("ARC" or "Committee"). No building, fence, wall, or any other type of improvement or structure shall be commenced, directed, placed, constructed, moved, altered or maintained upon the Property, to include any Lot thereof, nor shall any exterior addition to or change (including any change of color or significant change in landscaping of a Lot) or other alteration thereupon be made until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change (including, without limitation, any other information specified by the ARC) shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by an Architectural Review Committee designated by the Board of Directors. In the absence of an appointed ARC, the Board of Directors shall function as the ARC.

Section 2. Architectural Review Committee - Operation. The Board of Directors shall appoint an ARC. The ARC shall be composed of three (3) to five (5) persons designated from time to time by the Board of Directors. The Board of Directors shall endeavor to make the ARC membership representative of the community, with at least one member representing Council Court and/or at least one member representing Council Drive. No more than one owner from a lot shall serve on the Board of Directors or ARC at any one time. If, however, the Board cannot constitute an ARC consistent with that scheme for want of members willing to serve, that in no way shall be deemed as a limitation on the ability of the ARC to perform its responsibilities. The term of ARC membership shall be two (2) years. The affirmative vote of a majority of the members of the ARC shall be required in order to adopt or promulgate any rule or

regulation, or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Article.

Section 3. Approvals, etc. The ARC shall operate pursuant to the established Architectural Standards, which Standards shall be periodically revised by the ARC and approved by the Board of Directors and re-published to the Association's membership. Upon approval by the ARC of any plans and specifications submitted pursuant to the provisions of this Article and the ARC Standards, a copy of such plans and specifications, as approved, shall be deposited among the permanent records of such Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. In the event the Committee fails to approve or disapprove any plans and specifications which may be submitted to it pursuant to the provisions of this Article within forty (40) days after such plans and specifications (and all other materials and information required by the ARC) have been submitted to it in writing, then approval shall not be required and this Article will be deemed to have been fully complied with. In the event that an owner has submitted an application to the ARC and has not received a response, that owner shall personally confirm with the ARC Committee Chair the ARC's receipt of his application prior to commencing work on whatever project was the subject of the application.

Section 4. Limitations. Construction or alterations in accordance with plans and specifications approved by the ARC pursuant to the provisions of this Article and the Architectural Standards shall be commenced within six (6) months following the date upon which the same are approved by the Committee (whether by affirmative action or by forbearance from action, as in Section 3 of this Article provided), and shall be substantially completed within twelve (12) months following the date of commencement, or within such other period as the Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no significant deviation from the plans and specifications approved by the Committee without the prior consent in writing of the Committee. The ARC shall, in the exercise of its sound discretion, determine whether a deviation is "significant." Any deviation determined to be significant shall be deemed to automatically rescind the approval of the ARC, and any continuing construction thereafter and/or any improvement not constructed in accordance with the approved application shall be deemed unapproved and subject to removal at the Lot owner's cost and expense, and the Lot owner shall be liable for any attorneys' fees incurred by the Association in the enforcement of this Article. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance or on any other Lot.

Section 5. Rules and Regulations, etc. The ARC may from time to time propose to the Board of Directors such rules and regulations regarding the form and content of plans and specifications to be submitted for approval. Additionally, and with the approval of the Board of



Directors, the ARC may publish such statement of policy, standards, guidelines, procedures and establish such criteria relative to architectural styles or details, fences, colors, set-backs, materials or other matters relative to architectural control and the protection of the environment, as it may consider necessary or appropriate. Such rules, regulations, guidelines and/or policies shall be enforceable by the Association pursuant to Va. Code Section 55-513.. No such rules, regulations, statements, guidelines, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The decisions of the ARC shall be final except that any member who is aggrieved by any action or forbearance from action by the ARC (or by any policy, standards or guidelines established by the Committee) may appeal the decision of the ARC to the Board of Directors and, upon the request of such member, shall be entitled to a hearing before the Board of Directors of the Association.

Section 6. Restrictive Covenants. The following restrictive covenants shall run with and bind the land of each Lot and the Property

(a) No noxious, annoying or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or other members. Without limiting the generality of the foregoing, no speaker, electronic device, horn, whistle, siren, bell or other sound-emitting device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any other improvements. Owners shall be mindful and courteous with respect to noise so as to avoid disturbing their neighbors.

(b) The maintenance, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any dwelling, except that this shall not prohibit the keeping of dogs, cats or caged birds as domestic pets in accordance with any relevant ordinances of the Vienna Town Code or Fairfax County Code, provided they are not kept, bred or maintained for commercial purposes and, provided further, that such domestic pets are not a source of annoyance or nuisance to the neighborhood or other members. The Board of Directors shall have the authority, after providing notice to the pet owner and an opportunity for a hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other members, and such determination shall be conclusive. Any animal which is determined to be a nuisance or annoyance may be ordered from the Property by the Board. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by the laws and ordinances of the Town of Vienna and the Commonwealth of Virginia. Pets shall not be permitted upon the common areas unless accompanied by a responsible person and unless they are carried or leashed. Pet owners shall immediately clean up after their pets. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate.

(c) No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any other kind shall be permitted on any Lot.

(d) Except as herein elsewhere provided, no junk vehicle, trailer, camper, camp truck, house trailer, boat, any type of recreational vehicle or watercraft or other similar machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the common areas shall be kept upon the Property unless stored out of sight of all neighbors, nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon.

(e) Trash and garbage containers shall not be permitted to remain in public view except on the night before and the day of trash collection. Trash cans and garbage containers shall be removed from the curb by the evening of the day of the pick-up. No incinerator shall be kept or maintained upon any Lot. Garbage, trash and other refuse shall be placed in covered containers or in other types of containers as may be consistent with the Code of the Town of Vienna.

(f) No Lot shall be divided or subdivided and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose. No portion of any dwelling (other than the entire dwelling) shall be leased. The provisions of this subsection shall not be construed to prohibit the granting of any easement or right of way to any municipality, political subdivision, public utility or other public body or authority, or to the Association or any other person for any purpose.

(g) Except for hoses and the like which are reasonably necessary for the performance of normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, television cable, satellite dish antenna cable or similar transmission line shall be installed or maintained on any Lot above the surface. In the event that fulfillment of the purpose of such equipment may require installation above ground, the installation shall be concealed to the greatest extent possible.

(h) No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

(i) No sound trees measuring in excess of six (6) inches in trunk diameter that are at least two (2) feet in height shall be removed from any Lot without written approval of the Board of Directors. The Board of Directors may from time to time adopt and promulgate such additional rules and regulations regarding the preservation of trees and other natural resources and wildlife as it may consider appropriate.

(j) No structure of a temporary character, and no trailer, shack, barn, pen, kennel, run, stable, outdoor clothes dryer, or other buildings shall be erected, used or maintained on any Lot at any time.

(k) Except for entrance signs, directional signs, signs for traffic control or safety, and such promotional sign or signs as may be maintained by the Association, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Lot or dwelling, provided, however, that one temporary real estate sign not exceeding six (6) square feet in area, may be erected upon any Lot or attached to any dwelling placed upon the market for sale or rent. Any such temporary real estate sign shall be removed promptly following the sale or rental of such dwelling.

(l) No structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard the direction or flow of any drainage channels.

(m) Each Owner shall keep each Lot owned by him, and all improvements therein or thereon, in good order and repair and free of debris, including, but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all shrubbery, and the painting (and other appropriate external care and maintenance) of all structures and other improvements, all in a manner and with such frequency as is consistent with good property management. Except for flower gardens, shrubs, and trees, which shall be neatly maintained, all open areas shall be maintained in lawns or other materials as may approved by the Board of Directors. All lawn areas shall be kept mowed and shall not be permitted to grow beyond a reasonable height (maximum of 6 inches). No tree, hedge or shrub planting shall be maintained in such a manner as to obstruct sight lines for vehicular traffic. In the event an owner of any Lot in the community shall fail to maintain the Lot and the improvements situated thereon as provided in this Declaration, and upon the approving vote of a majority of the Board of Directors and after notice to the Owner, the Association shall have the right to enter upon the front portion of the Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a lien upon such Lot and such lien may be enforced in the same manner as an annual assessment levied in accordance with the relevant provisions herein.

(n) All outside television aerials, satellite dish or radio antennae or other aerials or antennae for either reception or transmission shall be subject to the requirement for prior application and approval by the ARC, except that those over-the-air reception devices which are covered by the Federal Communication Commission's Rule (47 C.F.R. 1.4000) may be installed on a Lot in a "preferred location" without prior application or approval, as such locations are specified by the ARC. No reception devices of any type or any other personal property of any type or description shall be permitted on the common area.

(o) No member shall make any private or exclusive or proprietary use of any of the common area except with the specific approval of the Board of Directors, and then only on a temporary basis. No member shall attempt to direct, supervise or in any manner

attempt to assert control over any employee or agent of the Association.

(p) Garages shall be used for their intended purpose only, i.e., the parking of vehicles therein, and shall not be improved so as to create additional living space or business space.

Section 7. Residential Use. All dwellings shall be used for private residential purposes exclusively, except that a professional office or home office may be maintained in a dwelling, provided that the use of same is limited to the person actually residing in the dwelling and, provided further, that such use is in strict conformity with the provisions of any applicable zoning law, ordinance or regulation. It is the intent of this provision that any professional or home office in the dwellings be restricted to the use of the residents of the dwelling, and that it shall not bring clients or customers from the general public into the community.

Section 8. Leasing. Any lease or rental agreement must be in writing and in a form approved by the Board of Directors, must have an initial lease term of at least twelve (12) months (unless prior written application for a shorter term is made to the Board of Directors and approved in writing by the Board prior to the commencement of the lease, but in no instance shall a lease term be less than six (6) months in duration), and must be made expressly subject to the covenants, conditions and restrictions set forth in this Declaration and to the rules and regulations which have been duly adopted and approved by the Board of Directors. Any failure by any lessee to comply with the terms of such documents shall be a default under the lease. Any lease of a Lot within the Association must entail the whole of the Lot, including the dwelling. Leasing of only a portion of a dwelling and/or a boarding situation is prohibited. The Board of Directors may require the leasing parties to execute an addendum to the lease to fully protect the Association's interests, which addendum may include rent garnishment, attorney-in-fact, and lease default provisions. A fully conformed copy of the lease agreement must be submitted to the Board of Directors no later than seven (7) days after the commencement of the initial lease term.

Section 9. Occupancy. Occupancy of the residential dwellings shall be in accordance with the limitations set forth in the Fairfax County Zoning Ordinance and Town of Vienna Zoning Ordinance. The Board of Directors may adopt and approve as necessary rules and regulations pertaining to occupancy which may be more restrictive than those contained in the aforementioned Zoning Ordinance(s).

Section 10. Fences. No fence may be constructed on any Lot without prior application to and the approval of the ARC or Board of Directors. No fence shall extend beyond the front building line of the dwelling on the Lot upon which any such fence is erected or the front building line of the dwellings on all immediately adjacent Lots. No fence shall be more than six (6) feet in height. Chain link and other wire fencing are specifically prohibited. The erection of all fences shall be subject to the provisions of this Article. Any fencing which attaches to or immediately abuts a dwelling unit shall be deemed the property of the owner of the unit to which the fence is attached, and that Lot owner shall be responsible for the maintenance, repair and

replacement thereof.

Section 11. Parking. Parking upon the common areas may be regulated by the Board of Directors and common area parking spaces may be assigned by the Board of Directors or by such committee as the Board of Directors may designate for that purpose. No vehicle belonging to any member, or to any guest or employee of any member, shall be parked in a manner which unreasonably interferes with or impedes ready vehicular access to any other parking space upon the common areas, or to any residential dwelling. Vehicles shall not be double-parked or parked so as obstruct a fire lane. Nothing shall be stored upon any of the parking areas nor shall the same be permitted to accumulate trash or debris. In the event the Board of Directors elects to assign parking spaces upon the common areas as herein provided for, then the Board of Directors may make reasonable efforts to assign parking spaces in a manner calculated to reasonably accommodate the elderly and the handicapped.

Section 12. Upkeep of Common Area. The Association shall be responsible for the management and upkeep of all of the common area, including those facilities, improvements or equipment which serve or affect more than one (1) Lot but which may be located on a Lot. Examples of such facilities, improvements or equipment include, but are not limited to, sidewalks, streets, parking spaces, storm drains, drainage measures, *etc.*

Section 13. Rules and Regulations. The Board of Directors shall have the authority to adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of any provision of this Declaration, and further regarding the use of the individual Lots and the common area. In adopting and enforcing such rules and regulations, the Board of Directors shall seek to advance the best interests of the Members/Owners by preserving the Property as an aesthetically attractive, orderly and well-maintained community, thereby preserving the property values of the Property. The Board of Directors shall have the authority to adopt and modify such rules and regulations as it may from time to time consider necessary or appropriate. Rules and regulations may be enforced pursuant to Va. Code §55-513 (*Virginia Property Owners' Association Act - Adoption and enforcement of rules*).

Section 14. Interpretation by the Association's Board of Directors. The Board of Directors shall have the right and authority to construe and interpret the provisions of this Declaration and any rules and regulations promulgated pursuant thereto, and in the absence of any adjudication by a court of competent jurisdiction to the contrary, the Board of Directors' construction and interpretation shall be final and binding as to all members, residents and Lots.

Section 15. Enforcement - Right to Remove or Correct Violations. In the event any violation or attempted violation of any of the covenants or restrictions contained in this Article shall occur or be maintained upon any Lot, or in the event of any other conduct in violation of any of the provisions or requirements of this Article or the Association's rules/regulations, then the same shall be considered to have been undertaken in violation of this Article and without the approval of the Board of Directors required herein, and, upon written notice from the Board,

such violation shall be promptly removed or abated.

The Association shall have the further right, through its agents, employees or committees, to enter upon and inspect the open area of any Lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions or requirements of this Declaration or the rules/regulations exist on such Lot; and neither the Association nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. The Association shall not enter areas enclosed by fencing for these inspections unless the prior written consent of owner has been obtained.

In the event the violation is not removed, or the violation is not otherwise terminated or abated within fifteen (15) days (or such shorter period as may be required in any such notice) after notice of such violation is delivered to the owner of the Lot, then the Association shall have the right, through its agents and employees (but only after a an approving majority vote of the Board of Directors), to enter upon the front portion of such Lot and to take such steps as may be necessary to remove or otherwise terminate or abate such violation. The cost thereof may be assessed against the Lot upon which such violation occurred and when so assessed, a statement for the amount thereof shall be rendered to the owner of said Lot, at which time the assessment shall become due and payable and a continuing lien upon such Lot, and a binding personal obligation of the owner of the Lot, in all respects (and subject to the same limitations) as provided in Article V of this Declaration. This right of entry shall not include entry by the Association into the enclosed rear portions of the Lots, unless an emergency condition (defined as an immediate hazard to health or property) exists therein which requires immediate action and the Lot owner is not reasonably available to provide the consent to enter.

In any legal action brought to enforce any restriction, covenant, condition, reservation lien, or charge imposed by the provisions of this Declaration, or any rule or regulation of the Association duly adopted pursuant hereto, the prevailing party shall be entitled to its costs and reasonable attorneys' fees, as such may be determined by the court, and those fees and costs shall become a lien on the Lot and shall be collectible as such pursuant to Va. Code § 55-516 (*Virginia Property Owners' Association Act - Lien for assessments*).

## **ARTICLE VII**

**Section 1. Party Walls.** A party wall is an internal dividing wall between Lots/dwellings. It is a wall that is built as part of the original construction of the dwellings upon the Property and placed on the dividing line between Lots or partly on one Lot and partly on another. To the extent consistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

**Section 2. Repairs and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal shares. Nothing

shall be done by any Owner which impairs the structural integrity of any party wall or which diminishes the fire protection afforded by any party wall. No Owner shall use any party wall for any purpose which creates a hazard or nuisance for any other Owner who makes use of the party wall.

Section 3.     Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use; without prejudice, however, of the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4.     Weatherproofing. Notwithstanding any other provision of this Article, any Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5.     Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6.     Encroachments. If any portion of a party wall shall encroach upon any adjoining Lot, or upon the common areas by reason of reconstruction, settlement or shifting or any building, or otherwise, a valid easement for the encroachment and for the maintenance of the same as long as the building stands, shall exist.

## ARTICLE VIII

Section 1.     Management Agent. The Board of Directors may employ for the Association a management agent or manager (the "Management Agent") at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall from time to time authorize in writing. The Management Agent shall perform such duties and services as the management agreement with the Association may require and as the Board of Directors may authorize in writing, to include the preparation of resale disclosure packets.

Any management agreement entered into by the Association shall provide *inter alia*, that such agreement may be terminated, with or without cause and without the payment of any penalty or termination fee, by either party upon sixty (60) days' written notice thereof to the other party. The term of any such management agreement shall not exceed two (2) years; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one-year periods.

Section 2.     Limitation of Liability. The Association shall not be liable to any member

for loss or damage, by theft or otherwise, of articles which may be stored upon the common areas. No diminution or abatement of assessments, as herein provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making or repairs or improvements to the common areas, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

## **ARTICLE IX**

**Section 1. Easement Rights by the Association.** The Association, its management agent, contractors or assigns shall have a non-exclusive easement and right of way and access in, through, over and across the Lots (excluding any dwelling) for the purpose of the maintenance, repair or replacement of common facilities, improvements, and/or common area and the exercise of its responsibilities and powers as set forth herein. Such easement shall include the right to make inspections, correct any condition originating in a Lot or the common area threatening another Lot of the common area, correct drainage, perform installations or upkeep of utilities, landscaping or other improvements located on the Property for which the Association is responsible, or correct any condition which violates this Declaration or any provision of the Association documents. Each Owner shall be liable to the Association for the cost of all maintenance or upkeep necessitated by any act, neglect, carelessness or failure to comply with this Declaration for which such Owner is responsible, and the costs incurred by the Association shall be assessed against such Owner's Lot in accordance with the relevant provisions herein. In the event that the Association must enter upon a Lot for the purposes set forth above, the Association shall have an affirmative obligation to restore the Lot to the greatest extent practicable to the condition which existed prior to the Association's entry.

**Section 2. Easements for Utilities and Related Purposes.** The Association is authorized and empowered to grant (and shall from time to time grant) such other licenses, easements and rights of way over the common areas for sewer lines, water lines, electrical cables, telephone cables, gas lines, storm drains, cables, underground conduits and such other purposes related to the provisions of utility services to the community, as may be considered necessary and appropriate by the Board of Directors and to advance the maintenance, preservation and enjoyment of the common areas.

## **ARTICLE X**

**Section 1. Amendment.** Subject to the other limitations set forth in this Declaration, this Declaration may be amended only by the approving vote of sixty-six percent (66%) of the members of the Association, voting in person or by proxy, at an annual or special meeting duly noticed for that purpose. Any amendment hereto shall be recorded among the land records for the jurisdiction in which this Declaration is recorded. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording.



Section 2. Duration. Unless amended in accordance with the provisions of Section 1 of this Article and the other requirements of this Declaration, and except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this Declaration, after which the said covenants shall be automatically extended for successive period of twenty (20) years each.

Section 3. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the community. Enforcement of these covenants and restrictions shall be by any proceeding of law or in equity against any person or persons violating or attempting to violate any covenants or restriction, either to restrain or enjoin violation or to recover damages or both, and against any Lot to enforce the lien created hereby; and the failure or forbearance by the Association or the owner of any Lot to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The provisions hereof may be enforced, without limitation, by the Association, by any owner or any mortgagee of any Lot which becomes subject to the provisions hereof, and by any other person, firm, corporation or other legal entity who has any right to use any of the common areas owned by the Association.

There shall be and there is hereby created and declared to be conclusive presumption that any violation or breach or attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages.

Any suit or proceeding brought to enforce any covenant, condition or restriction set forth herein, or to enforce any rule or regulation of the Association, shall entitle the prevailing party to an award of its attorney's fees and costs.

Section 4. Incorporation by Reference on Resale. In the event any owner sells or otherwise transfers any Lot, any deed purporting to effectuate such transfer shall contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration.

Section 5. Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by first class mail, postage prepaid, to the last known address of the person who appears as a member or owner on the records of the Association at the time of such mailing.

Section 6. No Dedication to Public Use. Nothing herein contained shall be construed

as a dedication to public use or as an acceptance for maintenance of any common areas by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the common areas.

Section 7. Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions herein, each of which shall remain in full force and effect.

Section 8. Consents. Consent of mortgagees shall be governed by Va. Code § 55-515.1. Any other provision of this Declaration to the contrary notwithstanding, neither the members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions without the prior written consent and approval of the institutional holders of all first mortgages of record on the Lots.

(a) abandon, partition, subdivide, encumber, sell or transfer any of the common areas; provided, however, that the granting of rights of way, easements and the like for public utilities or for other purposes consistent with the use of the common areas by the members of the Association shall not be considered a transfer within the meaning of this Section; or

(b) abandon or terminate this Declaration; or

(c) modify the method of determining and collecting common expense assessments or other assessments as provided for in this Declaration; or

(d) fail to maintain fire and extended coverage insurance on insurable common areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value of such common areas, based upon current replacement cost, provided that such coverage is commercially available and reasonable in costs, which determinations shall be made by the Board of Directors; or

(e) resolve to use the proceeds of casualty insurance for any purpose other than the repair, replacement or reconstruction of the common areas; or

(f) modify or amend any substantive provision of this Declaration which may materially affect any mortgagee rights or interests. Any amendment not materially affecting the rights and interests of the mortgagees shall not require prior notice thereto.

Section 9. Consent of Veterans Administration. Provided that any Lot in the project is then encumbered by a deed of trust or mortgage which is guaranteed by the Veterans Administration, neither the members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions without the prior written consent and approval of the Veterans Administration:

(a) abandon, partition, subdivide, encumber, sell or transfer any of the common areas; provided, however, that the granting of rights of way, easements and the like for public utilities or for other purposes consistent with the use of the common areas by the members of the Association shall not be considered a transfer within the meaning of this Section; or

(b) abandon or terminate this Declaration; or

(c) modify or amend any material or substantive provision of this Declaration.

Section 10. Additional Rights of Mortgagees - Notice. The Association may notify the holder of the first mortgage on any Lot for which any assessment levied pursuant to the Declaration of any installment thereof, becomes delinquent for a period in excess of thirty (30) days and the Association may notify the holder of the first mortgage on any Lot with respect to which any default in any other provision of this Declaration remains uncured for a period in excess of thirty (30) days following the date of such default. Any failure to give any such notice shall not affect the validity or priority of any first mortgage on any Lot and the protection extended in this Declaration to the holder of any such mortgage shall not be altered, modified or diminished by reason of such failure.

No suit, non-judicial foreclosure or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to this Declaration except after ten (10) days' written notice to the holder of the first mortgage on the Lot which is the subject matter of such suit or proceeding.

Any institutional first mortgagee of any Lot upon the Property may pay any taxes, utility charges or other charge levied against the common areas which are in default and which may or have become a charge or lien against any of the common areas and any such institutional first mortgagee may pay any overdue premiums on any hazard insurance policy or secure new hazard insurance coverage on the lapse of any policy, with respect to the common areas. Any first mortgagee who advances any such payment shall be due immediate reimbursement from the Association of the amount so advanced.

Section 11. Casualty Losses. In the event of substantial damage or destruction to any of the common areas, the Board of Directors of the Association shall give prompt written notice of such damage or destruction to the holders of all first mortgages of record on the Lots. No provision of this Declaration or the Bylaws of the Association shall entitle any member to any priority over the holder of any first mortgage of record on his Lot with respect to the distribution to such member of any insurance proceeds paid or payable on account of any damage or destruction of any of the common areas.

Section 12. Condemnation or Eminent Domain. In the event any part of the common areas is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, then the Board of Directors of the

Association shall give prompt written notice of any such proceeding or proposed acquisition to the holders of all first mortgages of record on the Lots. No provision of this Declaration or the Bylaws of the Association shall entitle any member to any priority over the holder of any first mortgage of record on his Lot with respect to the distribution to such member of the proceeds of any condemnation or settlement relating to a taking of any of the common areas.

Section 13.    Conflicts. In the event of any conflict between any provision of this Declaration and the Bylaws of the Association, this Declaration shall govern.

Section 14.    Captions and Gender. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

[SIGNATURES ON NEXT PAGE]

**IN WITNESS WHEREOF**, on behalf of the Board of Directors and the Association, I cause this Amended and Restated Declaration of Covenants and Restrictions to be executed and recorded on the aforementioned date. I certify that this Amended and Restated Declaration was approved unanimously by the membership in accordance with the requirements of Paragraph E.6 of the Declaration of Covenants and Restrictions of the Council Square II subdivision.

**COUNCIL SQUARE, INC.**

By: \_\_\_\_\_  
President

Attest: \_\_\_\_\_  
Board Secretary

**COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX**

This Amended and Restated Declaration of Covenants and Restrictions was acknowledged before me by Gerald J. Svat, President, Council Square, Inc. on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

My Registration Number is:  
My Commission Expires:

\_\_\_\_\_  
Notary Public

Kenneth E. Chadwick (VA, MD)  
Wilbert Washington II (VA, MD, DC)  
Stephen H. Moriarty (VA)  
Andrew G. Elmore (VA)  
Brendan P. Bunn (VA, DC)  
Daniel B. Streich (VA, DC)  
Allen B. Warren (VA, DC)



CHADWICK  
WASHINGTON  
MORIARTY  
ELMORE &  
BUNN P.C.

Jerry M. Wright, Jr. (VA)  
Sara J. Ross (VA)  
Sheyna Nicole Burt (VA, DC)  
Alexandra Spaulding (VA)  
Mary N. Peacock (VA)  
Marie Johnson (VA, DC)  
Cassie R. Craze (VA)  
Bruce H. Eastmunt (VA)  
Kristin K. West (VA, WV)

9990 Fairfax Boulevard, Suite 200  
Fairfax, Virginia 22030-1720  
(703) 352-1900 • FAX (703) 352-5293

WWW.CHADWICKWASHINGTON.COM  
FIRM E-MAIL: MAIL@CHADWICKWASHINGTON.COM

April 15, 2009

## **MEMORANDUM**

**To:** Town Council, Town of Vienna, Virginia

**From:** Board of Directors, Council Square, Inc.  
Daniel B. Streich, Counsel to Council Square, Inc.

**Subj:** Amended and Restated Declaration of Covenants and Restrictions  
("Declaration"); Summary of Changes

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**Purpose:** To obtain an approving vote of the Town Council on the proposed *Amended and Restated Declaration of Covenants and Restrictions* for Council Square, Inc. The reason that Council Square is bringing this "new" *Amended and Restated Declaration* before the Town Council is that Section E.6 of the "old" Declaration requires the prior approval of the Town Council of any proposed amendment to the "old" Declaration.

**Background:** Council Square is a townhome subdivision located in the Town of Vienna. The homeowners' association for Council Square is Council Square, Inc., a Virginia property owners association and an incorporated non-stock Virginia corporation (hereafter, "Association"). Its original *Declaration of Covenants and Restrictions* was recorded in the land records of Fairfax County, Virginia in 1980. Although the draftsmanship of "governing documents" (the Declaration and corporate bylaws) for common interest communities such as Council Square was very much an evolving "work in progress" in 1980, the quality of Council Square's Declaration was poor even by the standards of the day.

The Board of Directors asked this firm to attempt to amend the existing Declaration. When that proved to be inefficient, the Board requested that an entirely new Declaration be prepared. The objectives in preparing a new Amended and Restated Declaration were:

- 1) Correct the legal deficiencies of the existing Declaration;
- 2) Prepare the new Declaration so as to accord with the *Virginia Property Owners's Association Act* (Va. Code § 55-508, *et seq.*), which was enacted by the General Assembly approximately ten (10) years after the original Declaration had been recorded; and,
- 3) Incorporate into the new Amended and Restated Declaration all relevant rulings handed down by the Supreme Court of Virginia during the years of 1980-present, so as to bring the Association's Declaration current with relevant statutory and precedential case law.

**BRIEF SUMMARY OF RELEVANT CHANGES IN THE  
AMENDED AND RESTATED DECLARATION**

- 1) Sets forth restrictive covenants regarding the uses of the individual lots in order to preserve and protect property values within the community.
- 2) Grants the Association express enforcement authority re the individual lots.
- 3) Grants the Association express authority to regulate improvements, modifications and/or alterations to the individual lots.
- 4) Grants the Association the rule-making authority which is necessary pursuant to Va. Code § 55-513.
- 5) Expands the Association's authority to take administrative and legal remedies re the collection of unpaid assessment obligations.
- 6) Amends the amendment provision of the Declaration.
- 7) Grants the Association the right, after reasonable notice and an opportunity to cure and upon a majority vote of the Board of Directors, to enter upon an individual lot to correct or abate a violating condition after the lot owner has either refused or neglected to do so.
- 8) Clearly establishes the Association members' rights of enjoyment to the common area and the Association's authority regarding the common area.
- 9) Incorporates by express reference the *Virginia Property Owners' Association Act* and relevant case law rulings.

**RECOMMENDATION:** Council Square, Inc. respectfully requests that the Town Council approve the *Amended and Restated Declaration of Covenants and Restrictions*, as written.

## **Agenda Item 6**

Background material follows this separator page.



# Town of Vienna

## Council Agenda Communication

<b><u>DATE:</u></b> April 20, 2009	<b><u>SUBJECT:</u></b> ACCEPTANCE OF SPONSORSHIP FROM THE ROTARY CLUB OF VIENNA, INC. FOR THE 2009 JULY 4 <sup>TH</sup> FIREWORKS DISPLAY.
<b><u>AGENDA ITEM:</u></b> 6	

<b>Originating Department:</b>	Parks and Recreation
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EXPLANATION AND SUMMARY	
<p>The Rotary Club of Vienna, Inc. has offered to be a partial sponsor of the 2009 July 4<sup>th</sup> Fireworks Display. The Rotary Club would like to give the Town \$3,750.00 to go towards the show's cost. In addition, the Rotary Club would like the following:</p> <ul style="list-style-type: none"><li>• That the Rotary Club be named additional named insured on the event insurance provided by Melrose Pyrotechnics.</li><li>• That the Town identify the Rotary Club as a sponsor for the event in news releases, advertising and signage for the event.</li><li>• The Rotary Club sponsorship is for one-year only.</li><li>• All funds being donated by the Rotary Club to the Town will come from club operating funds derived from club members, and not proceeds of "ViVa! Vienna!"</li></ul>	

<b>Documents Attached:</b>	None.
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<b>Departmental Recommendation:</b>	Recommend acceptance of the partial sponsorship of the 2009 July 4 <sup>th</sup> Fireworks Display from the Rotary Club of Vienna, in the amount of \$3,750.
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<b>Town Manager's Recommendation:</b>	Concur.
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<b>Town Attorney's Review/Recommendation:</b>	The Town Council may authorize the acceptance of this sponsorship and funds in its discretion.
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<b>Purchasing Agent's Review/Recommendation:</b>	N/A
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<b>Cost and Financing:</b>	N/A
<b>Account Number:</b>	N/A

<b>Decision Needed by This Date:</b>	
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<b>PROPOSED/SUGGESTED MOTION</b>
<p>"I move for (<b>acceptance/rejection</b>) of a partial sponsorship from the Rotary Club of Vienna, Inc., in the amount of \$3,750.00 for the 2009 July 4<sup>th</sup> Fireworks Display."</p>

<b>DISPOSITION BY COUNCIL</b>	
<input type="checkbox"/> Approved	<input type="checkbox"/> Deferred Until:
<input type="checkbox"/> Denied	<input type="checkbox"/> Other:
<p>COMMENTS:</p>	

## **Agenda Item 7**

Background material follows this separator page.

# Town of Vienna

## Council Agenda Communication

<b><u>DATE:</u></b> April 20, 2009	<b><u>SUBJECT:</u></b> REQUEST AUTHORIZATION TO REJECT ALL BIDS FOR IFB 09-12, VIENNA PARKS AND RECREATION DEPARTMENT'S QUARTERLY BROCHURE.
<b><u>AGENDA ITEM:</u></b> 7	

<b>Originating Department:</b>	<b>Parks and Recreation</b>
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<b>EXPLANATION AND SUMMARY</b>	
<p>Five bids were received in response to IFB 09-12, Vienna Parks and Recreation Quarterly Brochure. None of the five bids received were acceptable based on the amount of funds available in FY 09/10. Therefore, staff requests that all bids be rejected. Staff will then rework the specifications and reissue the IFB, in an effort to lower printing costs for the seasonal brochures.</p>	

<b>Documents Attached:</b>	Invitation for Bid Summary Report – March 31, 2009
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<b>Departmental Recommendation:</b>	Recommend rejecting all bids for IFB 09-12, Vienna Parks and Recreation Quarterly Brochure.
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<b>Town Manager's Recommendation:</b>	Concur.
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<b>Town Attorney's Review/Recommendation:</b>	The Town Council may reject all bids in its discretion, or authorize expenditure of additional funds and award the contract to the lowest bidder.
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<b>Purchasing Agent's Review/Recommendation:</b>	See Bid Summary.
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<b>Cost and Financing:</b>	N/A
<b>Account Number:</b>	N/A

<b>Decision Needed by This Date:</b>	
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<b>PROPOSED/SUGGESTED MOTION</b>
<p>"I move for (<b>approval/disapproval</b>) to reject all bids for IFB 09-12, Vienna Parks and Recreation Quarterly Brochure."</p>

<b>DISPOSITION BY COUNCIL</b>	
<input type="checkbox"/> Approved	<input type="checkbox"/> Deferred Until:
<input type="checkbox"/> Denied	<input type="checkbox"/> Other:
<p>COMMENTS:</p>	

## INVITATION FOR BID SUMMARY REPORT

Date: March 31, 2009

### SOLICITATION INFORMATION

<b>BID NUMBER &amp; TITLE:</b>	<b>IFB 09-12, VIENNA PARKS &amp; RECREATION QUARTERLY BROCHURE</b>
<b>BID OPENING DATE &amp; TIME:</b>	March 31, 2009 @ 11:00 AM
<b>TOTAL FIRMS SOLICITED:</b>	Twenty-three (23)

### BID OPENING

<b>BIDS OPENED BY:</b>	Gina Gilpin
<b>WITNESSED BY:</b>	Amy-Jo Hendrix, Cathy Salgado
<b>TOTAL FIRMS RESPONDING:</b>	Five (5)
<b>APPARENT LOW BIDDER:</b>	<b>Goodway Graphics of VA, Inc.</b>
<b>RESPONSIVE BIDDER (Yes/No):</b>	Yes

### AWARD RECOMMENDATION

Five (5) bids were received in response to this IFB. Bids were received from: Workflow One (32 pages - \$26,832.00 and 40 pages - \$32,544.00); Goodway Graphics of VA, Inc. (32 pages - \$22,080.00 and 40 pages - \$26,400.00); Interstate Graphics, Inc. (32 pages - \$24,841.56 and 40 pages - \$41,320.00); Fairfax Mailing, Inc. (32 pages - \$24,088.00 and 40 pages - \$28,944.00); and Balderson's, Inc. (32 pages - \$38,751.16 and 40 pages - \$45,673.84).

**Goodway Graphics of VA, Inc.** is the low bidder for both options.

**Goodway Graphics of VA, Inc.** has been determined to be a "responsive" bidder. "Responsibility" of the bidder is being determined by Cathy Salgado. Contingent upon a determination of responsibility, award is recommended to be given to **Goodway Graphics of VA, Inc.**

THE TOWN OF VIENNA, VIRGINIA																	
BID NUMBER: IFB 09-12			Workflow One 7900 Sudley Road, Ste 805 Manassas, VA 20109  CONTACT: Audrey van Gessel PHONE: 703-667-6400 ext 5422 FAX: 703-631-4572			Goodway Graphics of VA, Inc 6928 Electronic Drive Springfield, VA 22151  CONTACT: Guy Perotti PHONE: 703-941-1160 FAX: 703-656-8511			Interstate Graphics, Inc. 3208 Hanover Road Johnson City, TN 37604  CONTACT: Andy Kraus PHONE: 423-282-1511 ext 21 FAX: 423-282-0452			Fairfax Mailing, Inc. 2820 Dorr Ave, #100 Fairfax, VA 22031  CONTACT: Danny Nguyen PHONE: 703-573-8090 FAX: 703-573-8094			Balderson's Inc. 14101 Sullyfield Cir, Ste 100 Chantilly, VA 20151  CONTACT: 703-631-8900 PHONE: 703-631-1020 FAX:		
DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL					
12,000 copies of: 32-Page Flexi 50 lb. white recycled paper folded, trimmed and stapled to 8½" x 11". Full color cover. Delivery to Post Office and Community Center.	4	Quarter	\$6,708.00	\$26,832.00	5,520.00	22,080.00	\$6,210.39	\$24,841.56	\$6,272.00	\$25,088.00	\$9,687.79	\$36,751.16					
12,000 copies: 40 page flexi, 50 lb. white recycled paper folded, trimmed and stapled to 8½" x 11". Full color cover. Delivery to Post Office and Community Center.	4	Quarter	\$8,136.00	\$32,544.00	\$6,600.00	\$26,400.00	\$10,330.00	\$41,320.00	\$7,236.00	\$28,944.00	\$11,418.46	\$45,673.84					
TOTAL - 50 LB - 32 Pages				\$26,832.00		\$22,080.00		\$24,841.56		\$25,088.00		\$36,751.16					
TOTAL - 50 LB - 40 Pages				\$32,544.00		\$26,400.00		\$41,320.00		\$28,944.00		\$45,673.84					
Unit Costs for Additional Services:																	
1) Additional Copies of brochure		Per 1000	32 pg. - \$559 40 pg. - \$678				\$342.00		\$423.00		\$1,878.97						
2) 32 page Full Color Glossy 50 lb paper throughout			\$7,440.00				\$6,057.41		381/K		\$10,118.52						
3) 40 page Full Color Glossy 50 lb paper throughout			\$9,000.00				\$7,261.88		465/K		\$12,245.67						
LOW RESPONSIVE BIDDER																	
X																	

## INVITATION FOR BID SUMMARY REPORT

Date: March 31, 2009

### SOLICITATION INFORMATION

<b>BID NUMBER &amp; TITLE:</b>	<b>IFB 09-12, VIENNA PARKS &amp; RECREATION QUARTERLY BROCHURE</b>
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<b>RESPONSIVE BIDDER (Yes/No):</b>	Yes

### AWARD RECOMMENDATION

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THE TOWN OF VIENNA, VIRGINIA																				
BID NUMBER: IFB 09-12			Workflow One			Goodway Graphics of VA, Inc			Interstate Graphics, Inc.			Fairfax Mailing, Inc.			Balderson's Inc.					
BIDS DUE: 03/31/09 11:00 AM			7900 Sudley Road, Ste 805			6628 Electronic Drive			3208 Hanover Road			2820 Dorr Ave, #100			14101 Sullyfield Cir, Ste 100					
OPENED BY: GINA GILPIN			Manassas, VA 20109			Springfield, VA 22151			Johnson City, TN 37604			Fairfax, VA 22031			Chantilly, VA 20151					
WITNESS: AMY-JO HENDRIX			CONTACT: Audrey van Gessel			CONTACT: Guy Perotti			CONTACT: Andy Kraus			CONTACT: Danny Nguyen			CONTACT:					
CATHY SALGADO			PHONE: 703-667-5400			PHONE: 703-941-1160			PHONE: 423-282-1511			PHONE: 703-573-8090			PHONE: 703-631-8900					
VIENNA PARKS & RECREATION			FAX: 703-631-4572			FAX: 703-658-9511			FAX: 423-282-0452			FAX: 703-573-8094			FAX: 703-631-1020					
QUARTERLY BROCHURE			UNIT PRICE			TOTAL			UNIT PRICE			TOTAL			UNIT PRICE			TOTAL		
12,000 copies of: 32-Page Flexi 50 lb. white recycled paper folded, trimmed and stapled to 8½" x 11". Full color cover. Delivery to Post Office and Community Center.			4	Quarter	\$6,708.00	\$26,832.00	5,520.00	22,080.00	\$6,210.39	\$24,841.56	\$6,272.00	\$25,088.00	\$9,687.79	\$38,751.16						
									7,339.87											
12,000 copies: 40 page flexi, 50 lb. white recycled paper folded, trimmed and stapled to 8½" x 11". Full color cover. Delivery to Post Office and Community Center.			4	Quarter	\$8,136.00	\$32,544.00	\$6,600.00	\$26,400.00	\$10,330.00	\$41,320.00	\$7,236.00	\$28,944.00	\$11,418.46	\$45,673.84						
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2) 32 page Full Color Glossy 50 lb paper throughout					\$7,440.00		\$6,960.00	\$6,057.41		381/K		\$10,118.52								
3) 40 page Full Color Glossy 50 lb paper throughout					\$9,000.00		\$8,760.00	\$7,261.88		465/K		\$12,245.67								
LOW RESPONSIVE/BIDDER							X													

## **Agenda Item 8**

Background material follows this separator page.

# Town of Vienna

## Council Agenda Communication

<b>DATE:</b> April 20, 2009	<b>SUBJECT:</b> AUTHORIZATION TO EXTEND CONTRACT IFB 06-13, JANITORIAL SERVICES FOR TOWN HALL AND POLICE STATION, TO BLUE CHIP SERVICE, INC. FOR SIX (6) MONTHS, UNTIL SEPTEMBER, 2009.
<b>AGENDA ITEM:</b> 8	

<b>Originating Department:</b>	Department of Public Works
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EXPLANATION AND SUMMARY	
<p>This request is for authorization to extend contract IFB 06-13 for the first six (6) months of the third (3<sup>rd</sup>) one year extensions, until September 2, 2009. This agenda item was deferred by Council from the April 6, 2009 meeting.</p> <p>DPW is requesting funding in the amount of \$10,371.96 from FY 2009 for the months of April, May, and June 2009, and \$10,371.96 from FY 2010 for the months of July, August, and September 2009. This contract will be rebid and go before Council to award the new contract before the expiration date of this extension.</p>	

<b>Documents Attached:</b>	Six (6) month extension letter dated April 7, 2009 from Blue Chip Service, Inc.
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<b>Departmental Recommendation:</b>	The Director of Public Works recommends Council authorization to extend Contract IFB 06-13 for the first six (6) months of the third (3 <sup>rd</sup> ) one year extensions, until September 2, 2009. This agenda was deferred by Council from the April 6, 2009 meeting.
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<b>Town Manager's Recommendation:</b>	Concur.
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<b>Town Attorney's Review/Recommendation:</b>	The Town may extend this contract in the Town Council's discretion.
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<b>Purchasing Agent's Review/Recommendation:</b>	Contract is eligible for extension and a new solicitation will be issued.
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<b>Cost and Financing:</b>	\$20,743.92
<b>Account Number:</b>	10432-43702

<b>Decision Needed by This Date:</b>	April 20, 2009
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PROPOSED/SUGGESTED MOTION
<p>"I move for <b>(approval/disapproval)</b> to extend IFB 06-13, Janitorial Services for Town Hall and Police Station, for the first six (6) months of the third (3<sup>rd</sup>) one year extensions, until September 2, 2009. This contract will be rebid and go before Council to award the new contract before the expiration date of this extension."</p>

DISPOSITION BY COUNCIL	
<input type="checkbox"/> Approved	<input type="checkbox"/> Deferred Until:
<input type="checkbox"/> Denied	<input type="checkbox"/> Other:
COMMENTS:   	



Received

APR 10 2009

April 7, 2009

Blue Chip Service, Inc.  
Mr. Patrick Brown  
P. O. Box 3606  
Fairfax, VA 22038-3606

Public Works

RE: Janitorial Service for Vienna Town Hall and Police Department

Dear Mr. Brown:

The renewal for this contract went before the Town Council recently. It was their decision, due to the economy, that this contract should be renewed for a six (6) month interval and at the same rate as last year, instead of the usual one year contract, with a potential rebid during that time to see if a lower price can be competitively bid. Please be assured that this in no way reflects poor service on your part, it is merely a necessity due to the economy.

As a reminder, our Public Works Day falls on Thursday, May 21 this year, and we would like your services again to help clean the Northside Building and polish the floors. Jennifer Sigler will send a more detailed request via e-mail as we get closer to the event date.

If you concur to a six (6) month renewal of your contract, please sign below and return no later than April 15, 2009.

Should you have any questions, please contact me at 703-255-6387.

Sincerely,

Holly Chu, PE  
Director of Public Works

Concur:

Patrick Brown  
Blue Chip Services

cc: Gina Gilpin, Purchasing Agent  
Sandy Jester, DPW Assistant



## **Agenda Item 9**

Background material follows this separator page.

# Town of Vienna

## Council Agenda Communication

<b><u>DATE:</u></b> April 20, 2009	<b><u>SUBJECT:</u></b> AUTHORIZATION TO EXTEND IFB 08-08, RECYCLABLE MATERIAL PROCESSING, FOR THE FIRST (1 <sup>ST</sup> ) OF FOUR (4) POSSIBLE ONE YEAR EXTENSIONS, AND TO ACCEPT THE NEW REBATE/CREDIT OF \$20.00 PER TON.
<b><u>AGENDA ITEM:</u></b> 9	

<b>Originating Department:</b>	Department of Public Works
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EXPLANATION AND SUMMARY
<p>On June 16, 2008 Council awarded IFB 08-08, Recyclable Material Processing, to Waste Management-Recycle America Alliance, 2801 Dorr Avenue, Fairfax, VA 22031 for the disposal of commingled, newspaper, and cardboard curbside recycling collected by the Department of Public Works Sanitation Division.</p> <p>The Town of Vienna collects Recyclables in a Single Stream (Recyclables all mixed together in one truck).</p> <p>Single Stream Materials:</p> <ul style="list-style-type: none"><li>• Paper</li><li>• Cardboard</li><li>• Cans</li><li>• Glass</li><li>• Aluminum</li><li>• Plastics 1-7</li><li>• Other Plastics</li></ul> <p>Waste Management has proposed rebating the Town of Vienna \$20.00 per ton for Single Stream recyclables, effective July 1, 2009. Last year the Town received \$47.00 per ton in revenue.</p> <p>This request is for authorization to extend IFB 08-08 to Waste Management-Recycle America Alliance for the first (1<sup>st</sup>) of four (4) possible one year extensions and accepting the new rebate/credit of \$20.00 per ton.</p>

<b>Documents Attached:</b>	<ol style="list-style-type: none"><li>1. Renewal Notice proposal from Waste Management-Recycle America Alliance.</li><li>2. Page four (4) of IFB 08-08 Recyclable Material Processing.</li></ol>
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<b>Departmental Recommendation:</b>	The Director of Public Works recommends approval to extend IFB 08-08, Recyclable Material Processing, to Waste Management Recycle America for the first of four possible one year extensions, and accepting the lower rebate of \$20.00 per ton.
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<b>Documents Attached:</b>	<ol style="list-style-type: none"> <li>1. Renewal notice proposal from Waste Management Recycle America.</li> <li>2. Page four (4) of IFB 08-08 Recyclable Material Processing.</li> </ol>
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<b>Town Manager's Recommendation:</b>	Concur.
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<b>Town Attorney's Review/Recommendation:</b>	The Town may extend this contract or solicit bids in the Town Council's discretion.
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<b>Purchasing Agent's Review/Recommendation:</b>	Contract is current and eligible for renewal.
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<b>Cost and Financing:</b>	
<b>Account Number:</b>	General Fund Account Number 10422-43308

<b>Decision Needed by This Date:</b>	April 20, 2009
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<b>PROPOSED/SUGGESTED MOTION</b>
<p>"I move for <b>(approval/disapproval)</b> to extend IFB 08-08, Recyclable Material Processing, to Waste Management-Recycle America for the first (1<sup>st</sup>) of four (4) possible one year extensions, and to accept the lower rebate/credit of \$20.00 per ton, effective July 1, 2009."</p>

<b>DISPOSITION BY COUNCIL</b>	
<input type="checkbox"/> Approved	<input type="checkbox"/> Deferred Until:
<input type="checkbox"/> Denied	<input type="checkbox"/> Other:
COMMENTS:	





2801 Dorr Avenue  
Fairfax, VA 22031  
703.207.9100  
703.207.0244 (fax)

March 25, 2009

Town of Vienna  
Attn: Holly Chu  
127 Center St South  
Vienna, Va. 22180

RE: Contract Renewal Contract IFB 08-08

Dear Ms Chu,

In response to your letter of March 2, 2009 requesting acceptance of a one year extension of current contract pricing for recyclables, WM Recycle America will have to amend the pricing due to the drop in value of recycling commodities.

WM Recycle America proposes rebating the Town of Vienna \$20.00 (twenty dollars) per ton for Single Stream recyclables effective July 1, 2009.

We regret the reduction in rebates to the Town; however, Waste Management has no control over the global economic crisis, which has also affected our business and market commodity values. We value your business and hope this pricing is acceptable to the Town of Vienna. Please call me directly at 240-375-0212 if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Warmus". The signature is fluid and cursive, with a long horizontal line extending to the right.

Ed Warmus  
Site Manager  
WM Recycle America

Cc Sandy Jester

*From everyday collection to environmental protection, Think Green. Think Waste Management.*

## IFB 08-08 RECYCLABLE MATERIAL PROCESSING

The Town of Vienna will make an investigation as to the ability of the bidder to perform the work. The Town of Vienna reserves the right to reject any bid, if the evidence submitted by, or investigation of bidder fails to satisfy the Town that such bidder is properly qualified by experience and financial status to carry out the obligations of the contract and to complete the work contemplated therein. Conditional bids will not be accepted.

### SECTION V. MANDATORY TERMS AND CONDITIONS

Requirements in this Section have been specified as mandatory and must be met to the degree stated in these specifications in order for the bid to receive further consideration. Bids which fail to meet ALL of the mandatory requirements may be considered unacceptable and may not be considered for selection. Final acceptance of purchase will depend on the successful completion of all necessary work as specified. All attachments to this solicitation are incorporated into this Section and therefore, they are Mandatory Requirements.

Renewal of Contract: Upon written agreement of both parties, this contract may be renewed by the Town of Vienna for an additional four (4) year period at one year increments prior to the contract expiration date. Any increase in price at the time of renewal shall be submitted to the Town prior to contract renewal. Price increases shall not exceed the Municipal Cost Index (MCI) as published in *American City & County Magazine*, for the latest twelve (12) months for which statistics are available. Renewal shall depend upon the performance of the Contractor during the term of the contract and the ability to follow the instructions of the Contract Administrator.

Availability of Funds: It is understood and agreed between the parties herein that the Town shall be bound hereunder to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

Contract Period: Twelve (12) months from date of award.

Cancellation of Contract: The Town reserves the right to terminate any resulting contract, in whole or in part, without penalty, upon sixty (60) days notice to the contractor. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

Quantities: Quantities set forth in this solicitation are *estimates* only, and the contractor shall supply at bid prices actual quantities as delivered, regardless of whether such total quantities are more or less than those shown.

### SECTION VI. AWARD OF CONTRACT

The Town of Vienna reserves the right to make a separate award of each option, a group of options or all options, and to make an award either in whole or in part, whichever is deemed in the best interest of the Town. The award or awards will be made to the lowest responsive, responsible bidder or bidders as applicable.

## **Agenda Item 10**

Background material follows this separator page.

# Town of Vienna

## Council Agenda Communication

<b><u>DATE:</u></b> April 20, 2009	<b><u>SUBJECT:</u></b> REQUEST AUTHORIZATION FOR ADDITIONAL FY 2008-2009 BUDGETED FUNDS FOR MISCELLANEOUS SUPPLIES AND REPAIRS FROM SOLE SOURCE PROVIDER, INDIAN RIVER EQUIPMENT COMPANY, 2111 SMITH AVE., CHESAPEAKE, VA .
<b><u>AGENDA ITEM:</u></b> 10	

<b>Originating Department:</b>	Department of Public Works
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EXPLANATION AND SUMMARY	
<p>The Superintendent of the Water &amp; Sewer Division has noted that Indian River Equipment Company, 2111 Smith Ave., Chesapeake, VA. 23320 is the only known manufacturer of parts, service and maintenance on the Town's OmniStar Camera and Crawler. The Department of Public Works recommends staying with the current sole source provider, Indian River Equipment Company. There are no current contracts that the Town of Vienna can ride for the OmniStar Camera and Crawler. A Sole Source Notice was posted by the Purchasing Agent prior to Council review.</p> <p>The Department of Public Works has overspent the current purchase order of \$9,500.00 by \$901.37. We are requesting an additional \$4,000.00 from account number 50111-46007. It will cover the overage of \$901.37, and the remaining \$3,098.63 will cover additional parts, service, maintenance and emergencies through the remainder of FY 2008-2009. DPW requests that Council increase authorization to \$14,401.37 for Indian River Equipment Company.</p>	

<b>Documents Attached:</b>	<ol style="list-style-type: none"><li>1. Sole Source Waiver dated 04/02/09.</li><li>2. Notice of Sole Source Procurement.</li><li>3. Memorandum with Justification from Superintendent of Water &amp; Sewer Division.</li></ol>
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<b>Departmental Recommendation:</b>	The Director of Public Works recommends approval to continue using Indian River Equipment Company as a sole source provider for parts, service and maintenance on the Town's OmniStar Camera and Crawler; and approval of additional FY 2008-2009 funds with an estimated cost of \$4,000.00.
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<b>Town Manager's Recommendation:</b>	Concur.
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<b>Town Attorney's Review/Recommendation:</b>	The Town Council may award a sole source contract upon written justification and posting. The Town Council may authorize the expenditure of funds for the requested vendor in its discretion.
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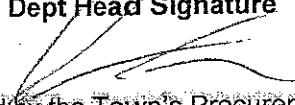
<b>Purchasing Agent's Review/Recommendation:</b>	Request for waiver has been approved and notice has been posted on the Town bulletin board.
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<b>Cost and Financing:</b>	Estimated cost \$4,000.00.
<b>Account Number:</b>	50111-46007

<b>Decision Needed by This Date:</b>	April 20, 2009
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<b>PROPOSED/SUGGESTED MOTION</b>	
<p>"I move for <b>(approval/disapproval)</b> to continue using Indian River Equipment Company as a sole source provider for parts, service and maintenance on the Town's OmniStar Camera and Crawler; and approve additional Fiscal Year 2008-2009 funds with an estimated cost of \$4,000.00, which would bring the total cost for Fiscal Year 2008-2009 to \$14,401.37."</p>	

<b>DISPOSITION BY COUNCIL</b>	
<input type="checkbox"/> Approved	<input type="checkbox"/> Deferred Until:
<input type="checkbox"/> Denied	<input type="checkbox"/> Other:
COMMENTS:	

Req #	Dept DPW	Date 04/02/09	Dept Head Signature 	Proposed Vendor Indian River Equipment	Amount \$14,401.37
A Request For Waiver is required by the Town's Procurement Policies and Procedures. Check the box below that applies to the proposed purchase.					
Sole Source/Proprietary	<u>X</u>	Emergency Procurement	<u>  </u>	Waive Purchase Procedures	<u>  </u>

**CHECK JUSTIFICATION(S) BELOW THAT APPLY TO THE PROPOSED PURCHASE AND SUPPLY DOCUMENTATION/EXPLANATION AS REQUIRED**

- X 1. Commodity/Service is from the original manufacturer or provider. There are no other distributors. (Findings must be documented below or attached)
2. The product is an integral part of existing equipment. Other brands not interchangeable. (State manufacturer and model number of existing equipment below.)
3. Only known product that meets the specialized needs of the department to bring about continuity of results. (Explain in detail below or attached)
4. Staff has had extensive training and/or experience with the product. Purchase of other than proposed product would incur substantial cost in re-training. (Explain in detail below or attached)
5. Purchase of this item/service is of an urgent nature because it is essential to public health & safety. (Describe in detail below)
6. Unable to obtain 3 or more quotes for item/service (Explain in detail below or attached)
7. None of the above apply. (State justification below and explain in detail)

**Explanation:**

The Town of Vienna Water & Sewer Division uses Indian River Equipment to purchase parts, equipment and maintenance on the OmniStar Camera and one (1) R.S. Technical Crawler. The Camera and Crawler allows the Water & Sewer Division to service six inch diameter and greater sewer mains. The mainline camera and crawler needs parts, service and maintenance so the entire operation will not come to a stop. Currently there are no contracts available for the Town of Vienna to ride.

The Town's Superintendent of Water & Sewer Division has noted that Indian River Equipment Company is the only known manufacturer for the TV Camera Equipment in the States of Virginia, North and South Carolina that meets the Town specifications which are compatible with the existing TV Camera Equipment and Parts.

Public Works has spent to date \$10,401.37 and we are asking for an additional \$4,000.00 to cover parts, service and maintenance. The total amount requested is \$14,401.37, which is scheduled to go to Council 4/20/09.

Reviewed by:  Date: 4/3/09 Reviewed by:  Date: 4/2/09  
Purchasing Agent Town Attorney

Reviewed and Approved by:  Date: 4-6-09  
Financial Director

Reviewed and Approved by:  Date: 4-6-09  
Town Manager

Posted 4/6/09  
mg

**TOWN OF VIENNA, VIRGINIA  
NOTICE OF SOLE SOURCE PROCUREMENT  
IN EXCESS OF \$10,000**


**DESCRIPTION:** The Town of Vienna Water & Sewer Division uses Indian River Equipment to purchase parts, equipment and maintenance on the OmniStar Camera and one (1) R.S. Technical Crawler. The Camera and Crawler allows the Water & Sewer Division to service six inch diameter and greater sewer mains. The mainline camera and crawler needs parts, service and maintenance so the entire operation will not come to a stop. Currently there are no contracts available for the Town of Vienna to ride.


**BASIS:** The Town's Superintendent of Water & Sewer Division has noted that Indian River Equipment Company is the only known manufacturer for the TV Camera Equipment in the States of Virginia, North and South Carolina that meets the Town specifications which are compatible with the existing TV Camera Equipment and Parts.

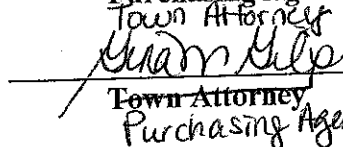
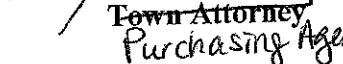
The FYE 2009 cost of for TV Camera Equipment is estimated not to exceed \$14,401.37.

**DATE COUNCIL WILL CONSIDER AWARD:** April 20, 2009

**POSTING OF NOTICE:** Town Hall Public Notice Bulletin Board

 \_\_\_\_\_ 4/4/09  
Department Head Date

 \_\_\_\_\_ 4/6/09  
Purchasing Agent Date


 \_\_\_\_\_ 4/3/09  
Town Attorney Date  
 \_\_\_\_\_  
Purchasing Agent

**NOTICE OF AWARD:** Pursuant to Virginia Code, paragraph 2.2-4301, the Vienna Town Council awarded the above referenced contract on \_\_\_\_\_ as the only practical source available. Council has made such determination on the basis of the facts described herein.

\_\_\_\_\_  
Mayor Date

**DATE:** March 25, 2009

**MEMORANDUM**

**TO:** Director of Public Works  
**FROM:** Superintendent of Water and Sewer   
**Re:** Sole Source use and P.O. Increase to Indian River Equipment

Indian River is the Virginia State vendor for RS Technical equipment and parts. This is the manufacturers' representative we must use for the sanitary sewer T.V equipment and parts. We are compelled to go through them for all RST equipment and parts and this year we had one malfunction which cost us \$4, 000 or nearly 50% of our yearly purchase order. I think \$3,000 additional should be adequate to last the rest of fiscal year 08-09.

Thank you very much.

Vernon Anderson  
Superintendent Water and Sewer



## **Agenda Item 11**

Background material follows this separator page.

# Town of Vienna

## Council Agenda Communication

<b><u>DATE:</u></b> April 20, 2009	<b><u>SUBJECT:</u></b> SET DATE FOR PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO TOWN OF VIENNA CODE, CHAPTER 1, GENERAL PROVISIONS, TO INCLUDE A PUBLIC WORKS FEE SCHEDULE.
<b><u>AGENDA ITEM:</u></b> 11	

<b>Originating Department:</b>	<b>Public Works</b>
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<b>EXPLANATION AND SUMMARY</b>	
<p>On December 17, 2007 the Town Council adopted revisions to bond fees, residential water and sewer fees, water meter fees, and hydrant meter deposit fees collected by the Department of Public Works.</p> <p>To clearly describe these fees to permit applicants, it is recommend that a Department of Public Works Fee Schedule be included as Section 1-13 of Chapter 1, to match Section 1-12, Schedule of Planning &amp; Zoning Fees. No changes in fee amounts are recommended at this time, however several local governments are currently reviewing their fees and we may bring forward fee revisions to Town Council in the future.</p>	

<b>Documents Attached:</b>	<ol style="list-style-type: none"><li>1. Proposed Ordinance.</li><li>2. December 17, 2007 Town Council Agenda Report revising Department of Public Works fees.</li></ol>
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<b>Departmental Recommendation:</b>	The Director of Public Works concurs with the proposed revisions and additions and recommends their approval.
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<b>Town Manager's Recommendation:</b>	Set Public Hearing for May 11, 2009.
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<b>Town Attorney's Review/Recommendation:</b>	The Town must advertise and hold a public hearing to adopt or amend its schedule of fees.
-----------------------------------------------	-------------------------------------------------------------------------------------------

<b>Purchasing Agent's Review/Recommendation:</b>	N/A
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<b>Cost and Financing:</b>	N/A
<b>Account Number:</b>	N/A

<b>Decision Needed by This Date:</b>	April 20, 2009
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<b>PROPOSED/SUGGESTED MOTION</b>
<p>“I move for approval to set the date of May 11, 2009 for conducting a Public Hearing on the consideration of a proposed ordinance to amend the Code of the Town of Vienna, Chapter 1, <i>General Provisions</i>, adding Section 1-13, <i>Schedule of Public Works Fees</i>.”</p> <p>“I further move that the Town Clerk is directed to advertise notices of Public Hearing.”</p> <p><i>Or other action as determined by the Mayor and Town Council to be appropriate.</i></p>

<b>DISPOSITION BY COUNCIL</b>	
<input type="checkbox"/> Approved	<input type="checkbox"/> Deferred Until:
<input type="checkbox"/> Denied	<input type="checkbox"/> Other:
COMMENTS:	

## PROPOSED ORDINANCE

**Proposed by: Department of Public Works** (*Revisions in bold italic text*)

A proposed ordinance to amend the Code of the Town of Vienna, Chapter 1, General Provisions.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF VIENNA, VIRGINIA THAT:

**Section 1:** Section 1-12, The Town Code, Chapter 1, General Provisions, is amended to read as follows:

### CHAPTER 1

#### GENERAL PROVISIONS

- § 1-1 How Code Designated and Cited
- § 1-2 Rules of Construction and Definitions Generally
- § 1-3 Provisions Considered as Continuations of Existing Ordinances
- § 1-4 Effect of Repeal of Ordinances
- § 1-5 Severability of Parts of Code
- § 1-6 Catchlines of Sections
- § 1-7 General Penalty; Continuing Violation (Amend. 10-90)
- § 1-7.1 Punishment for Conviction of Misdemeanor (New 9-10-91)
- § 1-8 Collection and Disposition of Fines
- § 1-9 Confinement for Failure to Pay Fine
- § 1-9.1 Fee Charged for Passing Bad Checks to Town. (New 6-86)
- § 1-10 Right to Entry for Purposes of Inspection
- § 1-11 Town Seal
- § 1-12 Schedule of ***Planning & Zoning*** Fees
- § 1-13 Schedule of Public Works Fees***

. . .

Sec. 1-12 Schedule of ***Planning & Zoning*** Fees.

#### THE TOWN OF VIENNA SCHEDULE OF ***PLANNING & ZONING*** FEES:

<u>CHANGES IN ZONING:</u>	\$2,000.00
<u>SUBDIVISION PLATS:*</u>	
Preliminary Plats	\$700.00 plus \$30.00 per lot
Revised Preliminary Plats	\$300.00
Final Plats	\$250.00 plus \$30.00 per lot
Revised Final Plats or Reapproval of expired Final Plats	\$300.00
<u>SITE PLAN REVIEW:*</u>	

Site Plans (including Revised Site Plans, Wall Waivers, Landscape Plans, and Modifications of Requirements)	\$1,800.00 plus \$30.00 for each 1,000 square feet of gross floor area of new construction
Reapproval of expired Site, Landscape Plans or Modifications of Requirements	\$300.00
As-built Plan Review (per occurrence)	\$400.00

BOARD OF ZONING APPEALS:

Appeals, Variances or Zoning Map Interpretations	\$300.00
Conditional Use Permits	\$400.00

BOARD OF ARCHITECTURAL REVIEW:

New Development Review	\$200.00
Existing Development Review (Includes Revised Landscape Plans)	\$100.00

WINDOVER HEIGHTS BOARD OF REVIEW:

Appeals to Town Council from decision of WHBR \$250.00

OCCUPANCY PERMITS: \$ 50.00

SIGN PERMITS:

Permanent Signs	\$ 75.00
Temporary Signs	\$ 75.00 plus \$ 25.00 sign bond
Temporary Political Signs	\$ 25.00 plus \$ 25.00 sign bond

FENCE PERMITS: \$ 30.00

RESIDENTIAL BUILDING PERMITS: \$ 40.00 minimum fee, plus five cents (\$0.05)  
(Zones RS-16, RS-12.5, RS-10, RM-2 and RTH) per square foot of the area of new construction

COMMERCIAL BUILDING PERMITS: \$ 80.00 minimum fee, plus ten cents (\$0.10)  
(Zones T, C-1, C-1A, C-1B, C-2, C-M, CMP, and PR) per square foot of the area of new construction

DRIVEWAY PERMITS: \$ 40.00 each permit

ZONING ADMINISTRATOR INTERPRETATION/

DETERMINATION LETTER: \$ 250.00 fee per letter

BOUNDARY LINE ADJUSTMENT, CONSOLIDATION OR

EASEMENT PLAT: \$ 150.00 fee per occurrence

PORTABLE STORAGE CONTAINER \$ 25.00 fee for each permit

. . .

Sec. 1-13 Schedule of Public Works Fees.

THE TOWN OF VIENNA SCHEDULE OF PUBLIC WORKS FEES:

BOND FEES:

<u>Street Cut Bond</u>	<u>\$1,685.00</u>
<u>Inspection Fee</u>	<u>\$45.00</u>
<u>Defect Reinspect</u>	<u>\$45.00</u>
<u>Erosion &amp; Siltation</u>	<u>\$2000.00</u>
<u>Pool Bond</u>	<u>\$750.00</u>

RESIDENTIAL WATER AND SEWER FEES:

<u>Sewer Availability Res. S.F.</u>	<u>\$7,745.00</u>
<u>Sewer Availability Res. all else</u>	<u>\$6,170.00</u>
<u>Front Footage</u>	<u>\$800.00</u>
<u>Sewer Tap Inspection</u>	<u>\$100.00</u>
<u>Water Availability Res. SF</u>	<u>\$3,875.00</u>
<u>Water Availability Res. all else</u>	<u>\$3,875.00</u>
<u>Local Facilities</u>	<u>\$3,172.00</u>
<u>Water Tap Inspection</u>	<u>\$100.00</u>
<u>Emergency Repairs/after hours</u>	<u>\$1,000.00</u>
<u>Night Work Inspection</u>	<u>\$100.00</u>

WATER METER FEES:

<u>5/8"</u>	<u>\$850.00</u>
<u>1"</u>	<u>\$1,180.00</u>
<u>1 1/2" Flanged</u>	<u>\$2,205.00</u>
<u>1 1/2" Screwed</u>	<u>\$1,470.00</u>
<u>2" Disc</u>	<u>\$2,330.00</u>
<u>2" TF - Compound</u>	<u>\$3,190.00</u>
<u>3" TF - Compound</u>	<u>\$4,355.00</u>
<u>4" TF - Compound</u>	<u>\$6,375.00</u>

HYDRANT METER DEPOSITS:

<u>5/8"</u>	<u>\$250.00</u>
<u>3"</u>	<u>\$1,000.00</u>
<u>Fire Flow Tests</u>	<u>\$140.00</u>
<u>Fire Hydrant Replacement Fee</u>	<u>\$500.00</u>

~

**Section 2:** This Ordinance shall become effective ten (10) days following notice of adoption by the Town Council.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
M. Jane Seeman, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

# Town of Vienna

## Council Agenda Communication

**DATE:**  
December 17, 2007

**SUBJECT:** ADOPTION OF PROPOSED REVISIONS TO DEPARTMENT OF PUBLIC WORKS' FEES, INCLUDING BOND FEES, RESIDENTIAL WATER AND SEWER FEES, WATER METER FEES AND HYDRANT METER DEPOSIT FEES THAT ARE BELOW AVERAGE WHEN COMPARED TO AVERAGE FEES IN THE AREA.

**AGENDA ITEM:**  
9

**Originating Department:**

Department of Public Works

### EXPLANATION AND SUMMARY

On November 19, 2007, the Town Council conducted a public hearing on proposed revisions to Department of Public Works' fees, including bond fees, residential water and sewer fees, water meter fees and hydrant meter deposit fees. After closing the public hearing, the revised fees were approved and scheduled for tonight's agenda for formal adoption.

A work session was conducted with the Town Council on September 17, 2007 to discuss revisions to the D.P.W. fees noted above. The proposed schedule of fees is attached. Staff was directed to proceed with these revisions.

**Documents Attached:**

Copy of proposed fee revisions and comparisons of Bond Fees, Residential Water and Sewer Fees, Water Meter Fees, and Hydrant Meter Deposits for the Town of Vienna with other jurisdictions.

**Departmental  
Recommendation:**

**Town Manager's  
Recommendation:**

Adopt fees as presented.

**Town Attorney's  
Review/Recommendation:**



<b>Purchasing Agent's Review/Recommendation:</b>	
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<b>Cost and Financing:</b>	N/A
<b>Account Number:</b>	N/A

<b>Decision Needed by This Date:</b>	
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<b>PROPOSED/SUGGESTED MOTION</b>
<p>"I move for adoption of the proposed revisions to the Bond fees, Residential Water and Sewer fees, Water Meter fees, and Hydrant Meter Deposits, as presented."</p> <p>"I further move that the Town Clerk be directed to advertise a Notice of Adoption."</p>

<b>DISPOSITION BY COUNCIL</b>	
<input type="checkbox"/> Approved	<input type="checkbox"/> Deferred Until:
<input type="checkbox"/> Denied	<input type="checkbox"/> Other:
COMMENTS:	

TOWN OF VIENNA  
TOWN COUNCIL WORK SESSION ITEM  
SEPTEMBER 17, 2007

ITEM NO. \_\_\_\_\_ Department of Public Works Proposed Fee  
Schedule

BACKGROUND SUMMARY:

Attached is a proposed Fee Schedule for the Department of Public Works. When compared to other towns and cities in the surrounding area, the fees charged by the Town Of Vienna Department of Public Works are currently 31% below average. This proposal increases those fees that are below average, to make them comparable to the average of fees in the area. Fees that were at or above average have no change at this time. The Director of Public Works will be present at the work session to discuss this project and to answer any questions that may arise.

DOCUMENTS ATTACHED:

1. Memorandum from Director of Public Works dated September 10, 2007
2. Spreadsheet outlining the proposed DPW Fee Schedule
3. Spreadsheet comparing Public Works fee schedules from neighboring towns and cities with the Town of Vienna DPW fee schedule
4. Supporting data

RECOMMENDATION:

Such action as Council deems advisable

MEMORANDUM

To: Town Manager

FROM: Director of Public Works *ik*

DATE: September 10, 2007

SUBJECT: Proposed Revision to Schedule of Fees

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Pursuant to the request of the Mayor and Town Council, the staff has analyzed the current DPW Schedule of Fees, which has not been updated for some time.

Having reviewed current fee schedules for nearby jurisdictions, we propose to increase the fees to an amount equal to the average of the fees charged by the Town of Herndon, the City of Fairfax, the City of Falls Church, the Town of Leesburg, and the City of Manassas. In cases where the Town of Vienna charges more than the average of fees, we propose that no change is necessary at this time.

A comparison of our proposed fee schedule places Vienna within the middle range for those fees charged by nearby jurisdictions. We believe that such positioning adds validity to the proposal.

The Department of Public Works hopes to receive favorable consideration of the proposed fee schedule in an effort to bring the Town of Vienna in line with surrounding jurisdictions. The Mayor and Town Council will have to approve the proposed Schedule of Fees prior to it becoming effective. Please review the attached tables.

Bond Fees	Town of Herndon	City of Fairfax	City of Falls Church	Town of Leesburg	City of Manassas	Average (excluding TOV)	Town of Vienna	% below average	TOV +/- \$ Average	Median
Street Cut Bond	\$500.00	\$2,050.00	\$2,500.00			\$1,683.33	\$300.00	82%	(\$1,383.33)	\$2,050.00
Inspection Fee	\$40.00	\$45.00				\$42.50	\$40.00	6%	(\$2.50)	\$42.50
Defect Reinspect	\$35.00		\$40.00		\$50.00	\$41.67	\$0.00	100%	(\$41.67)	\$40.00
Erosion & Siltation	\$2,000.00	\$500.00	\$750.00			\$1,083.33	\$2,000.00		\$916.67	\$750.00
Pool Bond							\$750.00		\$750.00	

**Residential  
Water and Sewer Fees**

Sewer Availability Res. SF	\$4,621.00		\$6,700.00	\$7,292.00	\$12,360.00	\$6,204.33	\$4,413.00	29%	(\$1,791.33)	\$6,700.00
Sewer Availability Res. all else	\$3,697.00		\$2,450.00		\$12,360.00	\$3,073.50	\$4,413.00	-44%	\$1,339.50	\$3,073.50
Front Footage	\$600.00	\$600.00				\$600.00	\$800.00		\$200.00	\$600.00
Sewer Tap Inspection	\$130.00	\$80.00	\$75.00		\$75.00	\$90.00	\$100.00		\$10.00	\$77.50
Water Availability Res. SF	\$2,760.00	\$3,100.00	\$2,750.00	\$4,683.00	\$4,200.00	\$3,498.60	\$3,875.00		\$376.40	\$3,100.00
Water Availability Res. all else	\$2,210.00		\$2,200.00		\$4,200.00	\$2,870.00	\$3,875.00		\$1,005.00	\$2,210.00
Local Facilities	\$2,000.00	\$5,247.00	\$3,025.00	\$50.00	\$541.00	\$2,172.60	\$1,600.00	26%	(\$572.60)	\$2,000.00
Water Tap Inspection	\$130.00	\$80.00	\$25.00		\$75.00	\$77.50	\$100.00		\$22.50	\$77.50
Emergency Repairs/after hours							\$1,000.00		\$1,000.00	
Night Work Inspection	\$50.00					\$50.00	\$100.00		\$50.00	\$50.00

\*excluding City of Manassas  
\*excluding City of Manassas

**Water Meter Fees**

5/8"		\$989.00	\$1,125.00	\$428.00		\$847.33	\$140.00	83%	(\$707.33)	\$989.00
1"		\$1,582.00	\$1,275.00	\$676.00		\$1,177.67	\$215.00	82%	(\$962.67)	\$1,275.00
1 1/2" Flanged		\$2,372.00	\$3,665.00	\$1,469.00		\$2,502.00	\$518.75	79%	(\$1,983.25)	\$2,372.00
1 1/2" Screwed				\$1,469.00		\$1,469.00	\$571.25	61%	(\$897.75)	\$1,469.00
2" Disc							\$780.00		\$780.00	
2" TF - Compound		\$3,954.60	\$4,000.00	\$1,609.00		\$3,187.87	\$1,842.50	42%	(\$1,345.37)	\$3,954.60
3" TF - Compound		\$6,032.00	\$5,000.00	\$2,020.00		\$4,350.67	\$2,017.50	64%	(\$2,333.17)	\$5,000.00
4" TF - Compound		\$9,722.70	\$6,250.00	\$3,141.00		\$6,371.23	\$3,530.00	45%	(\$2,841.23)	\$6,250.00
6" TF - Compound		\$14,995.50	\$7,815.00			\$11,405.25			(\$11,405.25)	\$11,405.25

**Hydrant Meter Deposits**

5/8"				\$250.00		\$250.00	\$150.00	40%	(\$100.00)	\$250.00
3"				\$1,000.00		\$1,000.00	\$1,000.00		\$0.00	\$1,000.00
Fire Flow Tests		\$100.00		\$175.00		\$137.50	\$40.00	71%	(\$97.50)	\$137.50
Fire Hydrant Replacement Fee							\$500.00		\$500.00	

red= negative value  
black= positive value

Bond Fees	Average* (excluding TOV)	Town of Vienna	% below average	Proposed TOV Fee	Median
Street Cut Bond	\$1,683.33	\$300.00	82%	\$1,685.00	\$2,050.00
Inspection Fee	\$42.50	\$40.00	6%	\$45.00	\$42.50
Defect Reinspect	\$41.67	\$0.00	100%	\$45.00	\$40.00
Erosion & Siltation	\$1,083.33	\$2,000.00		\$2,000.00	\$750.00
Pool Bond	N/A	\$750.00		\$750.00	
<b>Residential Water and Sewer Fees</b>					
Sewer Availability Res. SF	\$7,743.25	\$4,413.00	43%	\$7,745.00	\$6,700.00
Sewer Availability Res. all else	\$6,169.00	\$4,413.00	28%	\$6,170.00	\$3,073.50
Front Footage	\$600.00	\$800.00		\$800.00	\$600.00
Sewer Tap Inspection	\$90.00	\$100.00		\$100.00	\$77.50
Water Availability Res. SF	\$3,498.60	\$3,875.00		\$3,875.00	\$3,100.00
Water Availability Res. all else	\$2,870.00	\$3,875.00		\$3,875.00	\$2,210.00
Local Facilities	\$2,172.60	\$1,600.00	26%	\$2,172.00	\$2,000.00
Water Tap Inspection	\$77.50	\$100.00		\$100.00	\$77.50
Emergency Repairs/after hours	N/A	\$1,000.00		\$1,000.00	
Night Work Inspection	\$50.00	\$100.00		\$100.00	\$50.00
<b>Water Meter Fees</b>					
5/8"	\$847.33	\$140.00	83%	\$850.00	\$989.00
1"	\$1,177.67	\$215.00	82%	\$1,180.00	\$1,275.00
1 1/2" Flanged	\$2,502.00	\$518.75	79%	\$2,505.00	\$2,372.00
1 1/2" Screwed	\$1,469.00	\$571.25	61%	\$1,470.00	\$1,469.00
2" Disc	N/A	\$780.00		\$2,330.00	
2" TF - Compound	\$3,187.87	\$1,842.50	42%	\$3,190.00	\$3,954.60
3" TF - Compound	\$4,350.67	\$2,017.50	54%	\$4,355.00	\$5,000.00
4" TF - Compound	\$6,371.23	\$3,530.00	45%	\$6,375.00	\$6,250.00
6" TF - Compound	\$11,405.25	N/A	N/A	N/A	\$11,405.25
<b>Hydrant Meter Deposits</b>					
5/8"	\$250.00	\$150.00	40%	\$250.00	\$250.00
3"	\$1,000.00	\$1,000.00		\$1,000.00	\$1,000.00
Fire Flow Tests	\$137.50	\$40.00	71%	\$140.00	\$137.50
Fire Hydrant Replacement Fee	N/A	\$500.00		\$500.00	

\*Town of Herndon, City of Fairfax, City of Falls Church, Town of Leesburg, City of Manassas

## **Agenda Item 12**

Background material follows this separator page.

# Town of Vienna

## Council Agenda Communication

<b>DATE:</b> April 20, 2009	<b>SUBJECT:</b> SET DATE FOR PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO TOWN OF VIENNA CODE, CHAPTER 23, <i>EROSION AND SILTATION CONTROL</i> , REQUIRING PAYMENT OF FEES BEFORE BEGINNING LAND DISTURBING ACTIVITIES.
<b>AGENDA ITEM:</b> 12	

<b>Originating Department:</b>	Public Works
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EXPLANATION AND SUMMARY	
<p>It is recommended that the Vienna Town Code, Chapter 23, <i>Erosion and Siltation Control</i>, be modified to include language requiring that permit fees be paid before any regulated land disturbing activities may commence. For readability, the proposed language also adds a few words to complete the sentence in § 23-7, B.</p> <p>The Virginia Department of Conservation and Recreation has approved the language in the proposed resolution.</p>	

<b>Documents Attached:</b>	Proposed ordinance.
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<b>Departmental Recommendation:</b>	The Director of Public Works concurs with the proposed revisions and additions and recommends their approval.
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<b>Town Manager's Recommendation:</b>	Set Public Hearing for May 11, 2009.
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<b>Town Attorney's Review/Recommendation:</b>	The Town must advertise and hold a public hearing to adopt, add or amend its provisions relating to E & S Controls.
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<b>Purchasing Agent's Review/Recommendation:</b>	N/A
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<b>Cost and Financing:</b>	N/A
<b>Account Number:</b>	N/A

**Decision Needed by This Date:**

April 20, 2009

**PROPOSED/SUGGESTED MOTION**

"I move for approval to set the date of May 11, 2009 for conducting a Public Hearing on the consideration of a proposed ordinance to amend the Code of the Town of Vienna, Chapter 23, ***Erosion and Siltation Control***, Article 2, ***Standards and Regulations***, revising Section 23-5, 23-6 and 23-7, and adding Section 23-9.1, ***Charges***."

"I further move that the Town Clerk is directed to advertise notices of Public Hearing."

*Or other Action as determined by the Mayor and Town Council to be appropriate.*

**DISPOSITION BY COUNCIL**

☐ Approved

☐ Deferred Until:

☐ Denied

☐ Other:

COMMENTS:



## PROPOSED ORDINANCE

**Proposed by: Department of Public Works** (*Revisions in bold italic text*)

A proposed ordinance to amend the Code of the Town of Vienna, Chapter 23, Erosion and Siltation Control, Article 2. Standards and Regulations.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF VIENNA, VIRGINIA THAT:

**Section 1:** The Town Code, Chapter 23, Erosion and Siltation Control, Article 2. Standards and Regulations, is amended to read as follows:

### CHAPTER 23

#### EROSION AND SILTATION CONTROL

##### Article 2. Standards and Regulations

- § 23-4 Erosion and Sedimentation Control Program (Amend. 12-77; 8-81; 6-89; 9-90; 9-91; 11-93; 12/96)
- § 23-5 Regulated Land Disturbing Activities (Amend. 12/96)
- § 23-6 Action on Erosion and Sediment Control Plans (Amend. 6-89; 6-91)
- § 23-7 Issuance of Land Disturbing Permit (Amend. 10-80; 6-89; 12/96)
- § 23-8 Monitoring, Reports, and Inspections (Amend. 4-20-87; 6-91; 11-93; 12/96)
- § 23-9 Administrative Appeal
- § 23-9.1 Charges**
- § 23-10 Penalties, Injunctions (Amend. 11-93; 12/96)
- § 23-11 Severability

. . .

#### ARTICLE 2. STANDARDS AND REGULATIONS

##### § 23-5 Regulated Land Disturbing Activities

A. Except as provided in §§ 23-4(a), 23-5(b) and 23-5(c), no person shall engage in any land disturbing activity until he has submitted to the Department of Public Works an erosion and sediment control plan for such land disturbing activity and until that plan has been reviewed ***, and approved and all fees are paid.*** Where land disturbing activities involve lands under the jurisdiction of more than one local control program an erosion and sediment control plan may, at the option of the applicant, be submitted to the board for review and approval rather than to each jurisdiction concerned. Where the land disturbing activity results from the construction of a single-family residence, an

agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan-approving authority. (Amend. 12/96)

. . .

§ 23-6 Action on Erosion and Sediment Control Plans (Amend. 6-89; 6-3-91)

A. The Department of Public Works shall, within 45 days, approve any erosion and sediment control plan submitted to it if it determines that the plan meets the conservation standards of the local control program, *and* if the person responsible for carrying out the plan certifies that he will properly perform the measures included in the plan and will comply with the provisions of this ordinance *and all fees are paid*. When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within forty-five (45) days. If no action is taken within the time specified above, the plan is deemed to be approved.

. . .

§ 23-7 Issuance of Land Disturbing Permit

A. Except as provided in § 23-7(b), no person shall engage in any land disturbing activity until he has acquired a land disturbing permit from the Department of Public Works.

B. Any person grading, filling or excavating on privately owned, occupied or operated agriculture or forest lands *is not required to secure a land disturbing permit*.

C. The Department of Public Works shall not issue any land disturbing or building permit for activities which involve land disturbing activities unless the applicant therefor submits with its application the approved erosion and sediment control plan, *and* certification that such plan will be followed *and all fees are paid*. Prior to issuance of any permit, the Town may also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the Town, to ensure that measures could be taken by the Town at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him by the approved plan as a result of his land disturbing activity. The amount of the bond or other surety for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on the unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the estimated cost of the conservation action. If the Town of Vienna takes such conservation action upon such as failure by the permittee, the Town of Vienna may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within sixty days of the achievement of adequate stabilization of the land disturbing activity in any project or section thereof,

the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated based upon the percentage of stabilization accomplished in the project or section thereof. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements of such permit.  
(Amend. 12/96)

. . .

**§ 23-9.1 Charges**

**The cost of the engineering services rendered by the Department of Public Works including studies, approval of plans, permit issuance, supervision and inspection of construction, are described in the fee schedule in § 1-13 of this Code.**

~

**Section 2:** This Ordinance shall become effective ten (10) days following notice of adoption by the Town Council.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
M. Jane Seeman, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

### **Agenda Item 13**

Background material follows this separator page.

# Town of Vienna

## Council Agenda Communication

<b>DATE:</b> April 20, 2009	<b>SUBJECT:</b> SET DATE FOR PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE CODE OF THE TOWN OF VIENNA, CHAPTER 16, <i>STREETS AND SIDEWALKS</i> , REQUIRING A PERMIT AND PAYMENT OF FEES BEFORE WORK IN THE RIGHT-OF-WAY.
<b>AGENDA ITEM:</b> 13	

<b>Originating Department:</b>	Public Works
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EXPLANATION AND SUMMARY	
<p>The Code of Virginia § 15.2 Chapter 16, allows localities to charge for the issuance of permits and inspection of work in the public right-of-way. It is recommended that the Vienna Town Code be modified to include language to specifically require any person, firm, or corporation to acquire an approved permit and approved plans as necessary, pay all fees, and follow all Department of Public Works standards before any work can begin in the public rights-of-way.</p>	

<b>Documents Attached:</b>	Proposed ordinance.
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<b>Departmental Recommendation:</b>	The Director of Public Works concurs with the proposed revisions and additions and recommends their approval.
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<b>Town Manager's Recommendation:</b>	Set Public Hearing for May 11, 2009.
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<b>Town Attorney's Review/Recommendation:</b>	The Town must advertise and hold a public hearing to adopt, add or amend its provisions relating to Streets & Sidewalks.
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<b>Purchasing Agent's Review/Recommendation:</b>	N/A
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<b>Cost and Financing:</b>	N/A
<b>Account Number:</b>	N/A

<b>Decision Needed by This Date:</b>	April 20, 2009
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PROPOSED/SUGGESTED MOTION
<p>"I move for approval to set the date of May 11, 2009 for conducting a Public Hearing on the consideration of a proposed ordinance to amend the Code of the Town of Vienna, Chapter 16, <b><i>Streets and Sidewalks</i></b>, Article 1, <b><i>In General</i></b>, adding Section 16-1.1, <b><i>Approved permit for work in public right-of-way required.</i></b>"</p> <p>"I further move that the Town Clerk is directed to advertise notices of Public Hearing."</p> <p><i>Or other Action as determined by the Mayor and Town Council to be appropriate.</i></p>

DISPOSITION BY COUNCIL	
<input type="checkbox"/> Approved	<input type="checkbox"/> Deferred Until:
<input type="checkbox"/> Denied	<input type="checkbox"/> Other:
COMMENTS:   	

## PROPOSED ORDINANCE

Proposed by: Department of Public Works (*Revisions in bold italic text*)

A proposed ordinance to amend the Code of the Town of Vienna, Chapter 16, Streets and Sidewalks, Article 1. In General.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF VIENNA, VIRGINIA THAT:

**Section 1:** The Town Code, Chapter 16, Streets and Sidewalks, Article 1. In General, is amended to read as follows:

### CHAPTER 16

#### STREETS AND SIDEWALKS

##### Article 1. In General

- § 16-1 Warnings of Street Hazards
- § 16-1.1 *Approved permit for work required.***
- § 16-2 Placing Dirt, Ashes, Etc., Upon Streets Prohibited; Exceptions
- § 16-2.1 Riding of Horses and Ponies on Sidewalks, Sidewalk Areas, Etc.
- § 16-2.2 Storm Drainage Facilities - Maintenance and Cleanliness (Amend. 9-25-72)

. . .

##### Article 1. In General

##### **Sec. 16-1.1 *Approved permit for work in public right-of-way required.***

**(a) *It shall be unlawful for any person, firm or corporation to occupy or do any work of any kind in any street, highway, public right-of-way, easement or other area dedicated to the public use within the Town of Vienna without having first made application to the Department of Public Works and having received approved plans covering the work and a permit to do the work as shown on such plans.***

**(b) *All construction, planting, modifications, repair work, or maintenance of any nature performed by any individual, firm or corporation shall be performed according to the permit, plans, specifications, regulations and written instructions of the Department of Public Works unless otherwise specified. The Department may waive the requirement of formal plans where the work to be done is of a routine nature and is so limited in scope as not to require detailed plans and specifications for its proper execution.***

(c) Permits that have been approved shall become null and void if no work has been started within six months after the date of approval, or if after starting the work there in a period of six months in which there has been no work performed in accordance with the approved plans, or shall become null and void as specified in the Code of Virginia, unless a reasonable additional delay in completion of construction has been approved by the Director of Public Works.

(d) Inspection. In order to make the proper check of the work done, the owner, contractor or agent will notify the Department of Public Works upon the completion of each portion or type of work done under the permit so that proper inspection may be made to determine its correctness, such as the inspection of grade or rough excavation, drainage structures and utility lines before backfilling, storm sewers before backfilling, curb and gutter forms before placing concrete, subgrade before placing surface, and completion of the surface of street.

(e) Maintenance of traffic. All construction or repair work being done by any person, firm, or corporation in any street, highway, public right-of-way, easement, or other area dedicated to public use shall be sufficiently and adequately protected by barricades at all times. Traffic controls for street construction, maintenance, and utility operations shall conform to the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration. Such warning devices shall be maintained at all times. Both pedestrian and vehicular traffic shall be maintained at all times except as approved in accordance with the approved permit for the work.

(f) Charges. The cost of the engineering services rendered by the Department of Public Works including studies, approval of plans, permit issuance, supervision and inspection of construction, are described in the fee schedule in § 1-13 of this Code.



**Section 2:** This Ordinance shall become effective ten (10) days following notice of adoption by the Town Council.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
M. Jane Seeman, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

## **Agenda Item 14**

Background material follows this separator page.

# Town of Vienna

## Council Agenda Communication

<b><u>DATE:</u></b> April 20, 2009	<b><u>SUBJECT:</u></b> CONSIDERATION OF A RESOLUTION APPROVING PROPOSED IDENTITY THEFT PREVENTION (“RED FLAG RULES”) POLICY REQUIRED BY THE FEDERAL TRADE COMMISSION.
<b><u>AGENDA ITEM:</u></b> 14	

<b>Originating Department:</b>	Finance
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EXPLANATION AND SUMMARY	
<p>The Federal Trade Commission (FTC) has issued rules intended to detect, prevent, and mitigate instances of identity theft. These so called “Red Flag Rules” apply to “creditors” with “covered accounts.” The rules apply to government entities who are “creditors” in the sense that they bill in arrears for goods or services they provide. These rules apply primarily to the Town’s water and sewer billing operations.</p> <p>The proposed Identity Theft Prevention Policy (attached) is based on the model policy provided by the Virginia Municipal League. Basically it requires our front counter staff to be on the alert for suspicious documents, personal information, account activity, and unusual use of accounts as well as any alerts of identity theft from other sources. The policy details appropriate actions to be taken when there are alerts as well as requirements that must be met by the Town’s financial service providers. The policy also requires annual evaluation reports and can be modified by Council as need be.</p> <p>Council is requested to consider adopting a resolution approving the proposed policy.</p>	

<b>Documents Attached:</b>	Proposed Identity Theft Prevention Policy
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<b>Departmental Recommendation:</b>	Recommend Council approval of the proposed policy.
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<b>Town Manager's Recommendation:</b>	Concur
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<b>Town Attorney's Review/Recommendation:</b>	The Town Attorney recommends adopting the proposed Identity Theft Prevention program.
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<b>Purchasing Agent's Review/Recommendation:</b>	N/A
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<b>Cost and Financing:</b>	N/A
<b>Account Number:</b>	N/A

<b>Decision Needed by This Date:</b>	April 20, 2009
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<b>PROPOSED/SUGGESTED MOTION</b>
<p>"I move for the <b>(approval/disapproval)</b> of the Identity Theft Prevention Policy as proposed."</p> <p><i>Or such action as Council deems appropriate.</i></p>

<b>DISPOSITION BY COUNCIL</b>	
<input type="checkbox"/> Approved	<input type="checkbox"/> Deferred Until:
<input type="checkbox"/> Denied	<input type="checkbox"/> Other:
COMMENTS:	

<p style="text-align: center;"><b>TOWN OF VIENNA, VIRGINIA</b> <b>IDENTITY THEFT PREVENTION POLICY</b></p>
----------------------------------------------------------------------------------------------------------------

**I. STATEMENT OF PURPOSE**

The purpose of this policy is to establish an Identity Theft Prevention Program designed to detect, prevent and mitigate identity theft in connection with the opening of a Water and Sewer account or an existing Water and Sewer account and to provide for continued administration of the Program in compliance with the Fair and Accurate Credit Transaction Act of 2003.

**II. POLICY**

The Town of Vienna will monitor its Water and Sewer accounts for red flags of identity theft, and will respond to any red flags which alert Town staff to potential instances of identity theft.

**III. ADMINISTRATION**

The program will be administered by the Director of Finance as directed by and under the supervision of the Town Manager. Finance Department staff will implement the policy on a day to day basis. They will alert the Director of Finance to any red flags identified and will suggest policy modifications as needed. The Director of Finance may appoint a member of the Finance Department staff as the responsible staff member to handle red flags if they arise.

**IV. UPDATES AND TRAINING**

This policy shall be reviewed annually by the Director of Finance. Any modifications due to changes or improvements in technology, or changing tactics of those engaging in identity theft, or any other changing circumstances will be incorporated into the administration of the program as necessary. Staff involved with the implementation of this policy shall meet annually with the Director of Finance to discuss the policy, any changes required or any training deemed necessary by the Director of Finance.

**V. IDENTIFICATION OF RED FLAGS**

Finance staff will monitor all new and existing Water and Sewer accounts for the following red flags of possible identity theft:

**A. Notifications and Warnings from Credit Reporting Agencies**

- Any kind of fraudulent activity alert received by the Town from a credit reporting agency.

- Notice or report from credit agency of an alert or freeze on a new or existing customer.

#### **B. Suspicious Documents**

- Documents provided for identification that appear to have been altered or forged.
- Social Security Number provided on the Customer Agreement that does not match the name provided as verified by an outside source.
- Other documentation with information that is not consistent with existing customer information (such as a signature on a check that appears forged or altered).

#### **C. Suspicious Personal Information**

- Personal identifying information provided on the Customer Agreement is a duplicate of information in other accounts in the Town's database, unless a valid reason applies. For example, one owner of more than one property in Town would have the same owner information.
- Other information on the Customer Agreement is not consistent with readily accessible information that is on file with the Town, such as the Real Property data base.
- Personal identifying information received on the Customer Agreement is associated with known fraudulent activity as indicated by internal or third party sources used by the Town. For example, the address, phone number or SSN is the same as provided on an application already determined to be fraudulent.
- Personal identifying information received on the Customer Agreement is of a type commonly associated with fraudulent activity as indicated by internal or third party sources used by the Town. For example, the address on the Customer Agreement is fictitious, a mail drop, a prison address, or the phone number is invalid or associated with a pager or answering service.
- The address or phone number provided on the Customer Agreement is the same as or similar to the phone number submitted by an unusually large number of other persons opening accounts or existing customers.

#### **D. Suspicious Account Activity or Unusual Use of Account**

- The person receiving services refuses to complete the Customer Agreement or fails to complete all required fields.
- An existing account is used in a manner that is not consistent with established patterns of activity on the account. For example, sudden non-payment with no history of late or missed payments or sudden activity in a previously inactive account.
- Large increase in consumption paid without complaint.
- Mail sent to the customer is returned repeatedly as undeliverable although usage continues on the account.

- The Town is notified of unauthorized charges or transactions in connection with the customer's account.

#### **E. Alerts from Others**

- The Town is notified by a customer who has been the victim of identity theft, or a law enforcement agency, or any other person that the Town has opened a fraudulent account for a person engaged in identity theft.

### **VI. RESPONSES TO IDENTIFICATION OF RED FLAGS**

If a member of the Finance Department staff notes a red flag on a customer's account, the staff member will notify Customer Service and the Deputy Finance Director. Customer Service will then take the following actions:

1. Attempt to contact the customer to verify the transaction and contact information.
2. If an account appears to be compromised, the account will be frozen or closed. Any balance due will be turned over to State collection system or other collection method.
3. No new accounts will be opened for the customer.
4. Notify the Deputy Finance Director and the Director of Finance of the status of the investigation.
5. The Director of Finance can notify the Police Department, if appropriate, or determine that no further action is warranted.

### **VII. CREDIT CARDS OR OTHER FINANCIAL SERVICE PROVIDERS**

The Town accepts the four major credit and two major debit cards as a form of payment for Water and Sewer charges (VISA, Mastercard, American Express, Discover and VISA- and Mastercard-branded debit). Annually the Director of Finance or his designee will confirm in writing that the financial institutions that the Town has established its Merchant Accounts has developed and is maintaining a written policy for the detection and prevention of identity theft as required by the Fair and Accurate Credit Transaction Act of 2003.

All future contracts with financial institutions or other financial service providers involving Town Water and Sewer accounts shall include a requirement that the contracting financial institution or other financial service provider establish and maintain policies complying with federal regulations regarding the detection and prevention of identity theft.

### **VIII. ANNUAL REPORT**

The Director of Finance or his designee will prepare an annual report evaluating the policy and its implementation, and will provide it to the Town Manager. The report will address the following:

- Any material issues with the policies,

- The effectiveness of the policies,
- Confirmation that the financial institutions providing merchant accounts to the Town have appropriate policies in place,
- Note any significant instances involving identity theft and the Town's response to them, and
- Make recommendations for any changes to the policy

**IX. AMENDMENTS**

These policies and procedures will be amended as necessary to address any change of circumstances or changes in federal regulations.

<b><i>Signature of Town Manager:</i></b>	<b><i>Date:</i></b>